1   Q. Did you check those?

2   A. I went over them.

3   Three of the hard drives were supposed to

4   be a RAID group, created with a Windows Dynamic

11:41 5   Driver RAID; one of the drives was blank; and the

6   other two were part of a Dynamic RAID group but it

7   was missing the third drive.

8   The -- one of the DVDs had code for the

9   Adaptive Program from 2001.

11:41 10   Another CD had files on it that were

11   password protected and the password wasn't what

12   Dennis had given Warren.

13   None of it had current stuff. The most

14   recent files on the -- all of the collective CDs and

11:41 15   the hard drives, I couldn't even read, but the CDs

16   was 2001, I believe; maybe January 2002.

17   Q. You had mentioned an Adaptive Program?

18   A. ET Adaptive, the data compressor program.

19   Q. Uh-huh. Was there --

11:42 20   A. It had --

21   What's that?

22   Q. Go ahead.

23   A. It had the code for that but not the

24   complete code.

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1   It had imbedded another program inside

2   that was compiled within it so it didn't have the

3   complete code. We don't know what the code was for

4   this little embedded program inside of it was.

11:42 5   Q. Was there any source code on the CDs and

6   other media that you were given, other than this

7   Adaptive Program?

8   A. There were only the binaries, these

9   executables for video compression and a media player.

11:42 10   But other than that, that was the only

11   code on any of those drives was for the Adaptives.

12   Q. You mentioned binaries. Could you explain

13   to the Court what a binary is?

14   A. Binary is what source code -- we generally

11:43 15   just call all executables binaries.

16   They can be an executable or a DLL file.

17   They're the final product after compiling. You

18   create your binary file.

19   Q. Is the binary file created from the source

11:43 20   code?

21   A. Correct.

22   Q. How is that done?

23   A. Through a compiler such as -- there's

24   command line ones. The one we use in the building is

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1   the Visual Studio Product that Microsoft makes.

2   Q. And how does it operate?

3   A. It goes and runs through and compiles each

4   C++ file, creates intermediate libraries.

11:43 5   From those, it compiles them together and

6   creates the final executable or DLL and converts it

7   all to what we call the binary.

8   It's basically just ones and zeroes.

9   Q. Okay. So within a source code file, there

11:43 10   will be many lines of code, correct?

11   A. Correct.

12   Q. And there will be potentially many

13   different source code files that are directed to a

14   single application?

11:43 15   A. Correct.

16   Q. Does the compiler act upon all of those

17   source code files, each of which have lines in it, in

18   a sequence to then create a single executable file?

19   A. Exactly. It goes through each of the

11:44 20   files in the project.

21   You create a project in our developer

22   environment. It goes through each of those, creates

23   an intermediate lib file, library file, and then

24   combines all those together into your final

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1   executable, and it does it in a sequential fashion.

2   Q. So that you end up with a single program

3   that can be executed by the computer?

4   A. Correct.

11:44 5   Now, you might need intermediate steps.

6   Like, for example, our video compressor, it can't do

7   anything by itself. It's a DLL library. That's --

8   something else would need to, like a media player

9   would need that file to be able to play back our

11:44 10   video.

11   Q. You referred to a DLL library. What's

12   that?

13   A. Dynamic Link Library.

14   That's what Windows uses to modulize

11:45 15   different parts of the operating system and software

16   that's run on the operating system, so that to play

17   back, for example, MP3 audio, you would have a DLL

18   that handles MP3 audio files, and we created DLL

19   files for video and for audio.

11:45 20   Q. You'll have a DLL that will link to get

21   different kinds of files to the program?

22   A. For example, you try to play back eTreppid

23   Audio, there would be a -- that, for example, isn't

24   exactly the DLL, but it's similar and it would allow

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1 you to play back the audio.

2   Q. Okay.

3   A. We wouldn't create an executable for ET

4 Audio; we did have our own players.

11:45 5   Q. Getting back to source code, could you

6 describe the manner in which various programmers

7 would store source code onto the SRCSERVER?

8   A. ET Latest is where they were supposed to

9 put their latest builds.

11:46 10   We also had a folder in there called ET

11 Programmers, underneath which had a subfolder for

12 each programmer that we assigned.

13   Dennis and I assigned permissions that

14 they each -- that folder, for example, for Venkata,

11:46 15 only Venkata can get into that folder. None of the

16 other users on the network could.

17   Venkata had what we call modified

18 permissions. He could add files, change files, but

19 he can never delete. Only the administrator could

11:46 20 delete.

21   And there was a subfolder for each of the

22 programmers with those permissions assigned, and they

23 would put their work in progress under those and do

24 their own daily or weekly backups under there.

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1   Q. Okay. And were all of those files deleted

2 from the SRCSERVER?

3   A. All of the programmers except for Michael,

4 Jessie and Jim, which is not a programmer; all the

11:46 5 rest were deleted.

6   Jessie, Michael and Jim's folders were

7 still there.

8   Q. What was in Michael's folder?

9   A. The game engine code.

11:46 10   Q. What was in Jim's folder?

11   A. All the 3-D models he made for the game

12 engine.

13   And Jessie's had all the web site stuff he

14 developed; no C++ code, just Java and HTML stuff.

11:47 15   Q. Java and HTML are different programming

16 languages, correct?

17   A. They're web site programming languages.

18   Q. And that's different from the C++

19 programming language?

11:47 20   A. They don't make executables or programs

21 that are run; they just generate code to display web

22 pages.

23   MR. JAKOPIN: I don't have anything else.

24   Did your Honor have any questions of the

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1 witness as it relates to just having your

2 understanding be clear as it relates to source code

3 or files?

4   THE COURT: Yeah, I do have a pretty

11:47 5 basic -- pretty basic question that really hasn't

6 been, at least, laid out well enough for me to really

7 understand it.

8   I'm not exactly sure -- when you say a

9 source code, I'm not sure what you mean by that, so

11:47 10 if you could explain it to me in layman's terms so

11 that --

12   THE WITNESS: Okay.

13   THE COURT: Is it like a key that allows

14 you access to information --

11:48 15   THE WITNESS: No.

16   THE COURT: -- or is it the information

17 itself?

18   THE WITNESS: It's something you could

19 read. You could open one -- say, for example, for

11:48 20 the video Codec, it would be arranged -- the project

21 would be arranged, so this would make a DLL file to

22 let you play this video. There would be a bunch of

23 header files and then there would be a bunch of "C"

24 files.

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1   The header files just have definitions and

2 text that you could read. There would be like

3 function -- play function, for example, and it would

4 say what the variables for that function is.

11:48 5   Then, there would be a corresponding C++

6 file that would actually have the bulk of that

7 function. It would say "play function," and then it

8 would have some stuff inside, for example, a "for"

9 loop, it would be -- say, "For this number of things,

11:48 10 this number of iterations, do this calculation and go

11 around."

12   And you can actually -- anybody could read

13 this stuff. They might not know what it's doing, but

14 it's in plain English language.

11:49 15   THE COURT: But what I'm asking, is the

16 source code the device that you use to get access to

17 what you just described?

18   THE WITNESS: Uh-huh.

19   THE COURT: It is?

11:49 20   THE WITNESS: You could -- no. The source

21 code -- we collectively call all of this language

22 that I'm describing the source code.

23   THE COURT: It's the content?

24   THE WITNESS: You can look at it with a

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1 Word document or Notepad.

2   THE COURT: All right.

3   THE WITNESS: We use a special editor to

4 look at them --

11:49 5   THE COURT: All right.

6   THE WITNESS: -- and compile them.

7   THE COURT: All right. Now, out of

8 curiosity, do you have a security clearance?

9   THE WITNESS: Yes, I have top secret.

11:49 10   THE COURT: Top secret.

11   Do you know what clearance Mr. Montgomery

12 has?

13   THE WITNESS: He has top secret with a

14 special compartment, SCI special compartment. I

11:49 15 forget what it stands for. That's the highest level.

16   THE COURT: With regard to the

17 conversation that you indicated that you had on

18 January 10th -- actually, I first thought it was on

19 January 11th, but it appears that it was clarified to

11:50 20 have been on January 10th -- with Mr. Montgomery

21 where he said to you that Mr. Trepp was going to have

22 to pay big money or big bucks for "it."

23   What was the "it"? Did Mr. -- let me ask

24 it this way: Did Mr. Montgomery in that conversation

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1 describe the "it" or was his statement simply he has

2 to pay big bucks for --

3   THE WITNESS: No, he described what "it"

4 was.

11:50 5   THE COURT: What was "it"?

6   THE WITNESS: This was the top -- our most

7 recent contract, potential contract. It's anomaly

8 detection and satellite images, other images for the

9 government.

11:50 10   THE COURT: All right. Well, what I'm

11 talking about -- we're talking about source code for

12 that?

13   THE WITNESS: It's for the methods they

14 use to detect it.

11:50 15   THE COURT: All right. And are those --

16 is that a tangible thing or is that information

17 that's contained in his head?

18   Or do you know.

19   THE WITNESS: Well, I don't know exactly

11:50 20 how he did it. I know various people that worked on

21 it with him.

22   THE COURT: All right. Well, I may have

23 some further questions, but I don't --

24   Just give me a second; I thought I had one

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1 more.

2   No, I don't have anything further right

3 now.

4   Mr. Flynn?

11:51 5   MR. FLYNN: Hopefully it will be

6 relatively short, your Honor.

7

8   RECROSS EXAMINATION

9 BY MR. FLYNN:

11:51 10   Q. Mr. Venables, the stack of CDs which you

11 said was with four hard drives, and that was, quote,

12 "Everything in the safe"?

13   A. Correct.

14   Q. Is that, in fact, accurate, that the four

11:51 15 hard drives in the stack of CDs was everything in the

16 safe?

17   A. I don't know. I didn't take them from --

18 they weren't in a safe on your premises; they were

19 brought from a post office box or a bank vault

11:52 20 somewhere. I have no idea.

21   Q. Where did you get the terminology,

22 "Everything in the safe"?

23   A. From Warren. From Mr. Trepp.

24   Q. Was it the downstairs safe or the upstairs

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1 safe?

2   A. No safe in our building; it was at the

3 bank vault or someplace outside the building.

4   Q. How many safes, to your knowledge, did

11:52 5 Mr. Trepp have?

6   A. I have no idea what he has outside the

7 building. I know what we have in our building.

8   Q. Have you ever seen the contents of any

9 safe belonging to Mr. Trepp?

11:52 10   A. The one that we have in our secret room,

11 he opened for me and Jay Dixon.

12   Q. The secret room being what we described on

13 Exhibit 1 as the privacy room that's --

14   A. Right.

11:52 15   Q. -- right there, right?

16   And what did you see?

17   A. Spare copies of keys and various mini DV

18 tapes that we'd received from the military.

19   That was it.

11:53 20   Q. How many drawers did you look in?

21   A. The two -- there's two safe containers in

22 that room. Each has two drawers. Warren had the

23 only -- as far as I know, the only combination to

24 one. He opened it, showed both myself and Jay Dixon.

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1   And the other safe, Patty opened for us.

2   Q. So have you described, in total, what was

3   in both safes?

4   A. No. I just described the one he opened.

11:53 5   Q. "He" being?

6   A. Warren.

7   Q. And what was in that safe again, just

8   so --

9   A. That was just mini DV tapes, no hard

11:53 10 drives, and the spare keys to the building.

11   Q. And what was in the other safe?

12   A. The other safe had -- I forget the number;

13   we have a log file of it -- of hard drives that Patty

14   had placed in there that some of were classified,

11:53 15 some are not, and also a bunch of mini DV tapes;

16   probably 20.

17   Q. Had you ever seen the contents of either

18   of these safes prior to this time where you saw them

19   in --

11:54 20   A. No.

21   Q. And, again, it was in January of 2006 that

22   you saw these?

23   A. In the last two weeks when Jay Dixon from

24   DSS had me check both of them.

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1   Q. Did you see an inventory?

2   A. Yes. Patty had made an inventory.

3   Q. In which safe did you see the inventory?

4   A. In the safe that Patty opened.

11:54 5   Q. Where is the inventory now?

6   A. There's a copy in the safe and I have a

7   copy in my office.

8   Q. Do you have it with you?

9   A. No.

11:54 10   Q. What was on the inventory?

11   A. All the mini DV tapes and hard drives that

12   Patty said were in the hard drive at one time or

13   another.

14   There's some of them listed as missing

11:54 15 right now.

16   Q. Was there an inventory of the other safe?

17   A. No.

18   Q. Who created the inventory, if you know?

19   A. Patty told me she did.

11:55 20   Q. When did she create the inventory?

21   A. I have no idea.

22   Q. All right.

23   A. If -- she had updated it recently; that's

24   all I know.

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1   Q. That was going to be my next --

2   How many different editions of an

3   inventory in the -- call it the Patty Gray safe are

4   you aware of as you testify today?

11:55 5   A. There's just one copy in there.

6   I had to provide that to DSS.

7   Q. And how many editions had it gone through

8   you have no knowledge of; is that correct?

9   A. What's that again?

11:55 10   Q. How many editions of -- how many times

11   that inventory that you saw had been changed in the

12   past --

13   A. I don't know.

14   Q. -- you have no knowledge of?

11:55 15   A. No.

16   Q. Patty Gray may have some knowledge; is

17   that correct?

18   A. I saw the current one and I added stuff

19   that was in Warren's safe to it, so I'm -- the copy

11:55 20 that's in there has only been edited by me since I

21   first opened it.

22   Q. And you could have your office, over the

23   break, fax that inventory to you?

24   MR. JAKOPIN: Objection, your Honor.

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1   THE WITNESS: They don't have access.

2   MR. JAKOPIN: The inventory is beyond the

3   scope of redirect. I've given some latitude, but --

4   MR. FLYNN: It's got to do with the safe.

11:56 5   THE COURT: I'm interested in the truth,

6   not necessarily the scope of redirect.

7   Go ahead.

8   BY MR. FLYNN:

9   Q. You're the only one that has got the

11:56 10 combination?

11   A. DSS has instructed me to change the

12   combination and not to give it to anybody.

13   Q. Including Mr. Trepp?

14   A. Including Mr. Trepp.

11:56 15   Q. Including Mr. Gray?

16   A. Patty.

17   Q. I mean Miss Gray?

18   A. Correct.

19   Q. Correct?

11:56 20   A. That's right.

21   Q. Was the inventory created on her computer?

22   A. I have no idea.

23   Probably.

24   Q. So the various editions of the inventory

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1 may still be present on her hard drive?
2 **A. Correct.**
3 **Q.** Now, with regard to the CDs, the stack,
4 what's your best estimate of how many were in the
11:56 5 stack?
6 **A. Less than ten.**
7 **Q.** And do you know what safe they came from,
8 personally?
9 **A. No. I don't know where they came from.**
11:57 10 **Q.** Mr. Trepp handed them to you and said,
11 "This is everything in the safe."
12 Is that your testimony?
13 **A. That's right.**
14 **Q.** But you don't know what safe?
11:57 15 **A. He said that they were in a bank vault or**
16 **a P.O. Box somewhere; I forget which.**
17 **Q.** And where are those CDs today?
18 **A. In my office.**
19 **Q.** So you could bring those to court also?
11:57 20 **A. Correct.**
21 MR. PEEK: Your Honor, I'm going to
22 object.
23 We're not going to engage in discovery
24 right now. We made this request a long time ago of
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1 counsel and they didn't want -- they didn't want to
2 engage in any exchange of discovery last week when we
3 talked about it, and we're here now in a Preliminary
4 Injunction and I think to be asking to produce
11:57 5 documents over the lunch hour is unreasonable at this
6 time.
7 I understand this is a search for the
8 truth, and I understand the search, but, you know,
9 I'm not inclined to turn over anything to
11:58 10 Mr. Montgomery right now without having the
11 opportunity to certainly copy it before we do that,
12 make an inventory of it, and I think to ask to do
13 that in the noon hour and try to do that and have
14 some idea of what's on it between now and the close
11:58 15 of business today when we close this testimony is
16 unreasonable to ask.
17 MR. FLYNN: The question was only whether
18 he could do it, your Honor. That's where we are
19 right now.
11:58 20 MR. PEEK: Well, I know where he's going.
21 THE COURT: That's what I --
22 MR. FLYNN: I haven't asked --
23 THE COURT: That's what I thought the
24 question was and --
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1 MR. PEEK: Then, I don't know what the
2 relevance of that is.
3 THE COURT: Well, I do.
4 Go ahead and ask the question and we'll
11:58 5 see where we go with it.
6 BY MR. FLYNN:
7 **Q.** Mr. Venables, one of the CDs --
8 I want to remind you we just have a few
9 minutes.
11:58 10 One of the CDs you said had data
11 compression technology on it?
12 **A. Correct.**
13 **Q.** When you spoke to Mr. --
14 Strike that.
11:58 15 Did you see any of them --
16 Strike that.
17 Was the CD itself, the actual disk, inside
18 a little container?
19 **A. Plastic sleeve, yeah.**
11:59 20 **Q.** Did it have any markings on it?
21 **A. I believe it had the date, whichever that**
22 **was; I can't remember.**
23 **Q.** What was the date?
24 **A. I can't remember what it was.**
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1 **Q.** Did you see any marking on the data
2 compression CD of the type, "CD No. 1"?
3 **A. I can't recall.**
4 **Q.** As you sit here today, have you ever seen
11:59 5 the Contribution Agreement between Mr. Trepp and
6 Mr. Montgomery?
7 **A. No.**
8 **Q.** As you sit here today, are you aware if
9 that Contribution Agreement excluded -- only gives
11:59 10 data compression technology on CD No. 1?
11 **A. I don't know what their agreement is.**
12 **Q.** Do you have any knowledge, having looked
13 at whatever this CD is that you looked at that had
14 data compression technology, whether that correlates
12:00 15 in any way to the CD that's described in the
16 Contribution Agreement?
17 **A. The only thing I know is what I found on**
18 **the CD.**
19 **Q.** Did Mr. Trepp ever tell you that, "Oh,
12:00 20 yeah, that's the data compression technology CD that
21 is the basis for forming the company"?
22 **A. No. He didn't say that.**
23 **Q.** You, yourself, never worked on data
24 compression technology at eTreppid, did you?
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1   A. No.
2   Q. So when you looked at that CD --
3   Strike that.
4   How many files were on that CD?
12:00 5   A. A couple of hundred.
6   Q. And you don't recall the date?
7   A. No. It was either late 2001 or early
8 2002; I can't remember.
9   Q. And as I understand your testimony, some
12:00 10 of the contents of the CD, in part, were password
11 protected so you couldn't access them?
12   A. That's right.
13   Q. But other components of that CD, the CD on
14 data compression, were not password protected?
12:01 15   A. There were separate CDs.
16   One CD only had password protected files
17 with a text file that said, "Warren knows the
18 password."
19   The other CD had this Adaptive Program --
12:01 20 source code for the Adaptive Program which wasn't
21 complete; it was missing stuff.
22   Q. All right. The one where Warren knows the
23 password, did you ask him if he knew the password?
24   A. He said he did, and we tried it and it

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1 didn't work.
2   Q. What was the password that he gave you?
3   A. I don't remember.
4   Q. Was there anything in the safe that would
12:01 5 indicate what the password was? Any document?
6   A. Warren's safes didn't have any paper
7 documents in it, only mini DV tapes.
8   Patty's safe had copies of our contract
9 from the military and the material log.
12:02 10   Q. Now, over the -- all the years that
11 eTreppid had been in business since 1998, do you know
12 how many Mr. -- how many passwords for files
13 Mr. Trepp had in his head?
14   A. I have no idea what passwords he had.
12:02 15   Q. Do you know whether he maintained a
16 separate inventory of passwords for the millions of
17 files that were in eTreppid computers?
18   A. I've seen him access his locked drawer in
19 his office that had a paper with the passwords on it.
12:02 20   Q. Thank you.
21   A. I've never seen it.
22   Q. Did you ever look at Mr. Trepp's computer
23 to see whether he maintained passwords on his
24 computer?

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1   A. No.
2   Q. So how -- in the document that you saw,
3 how many different passwords were on it?
4   A. I didn't see the document.
12:02 5   Q. What did you --
6   A. I just saw him checking for passwords or
7 something one time.
8   Q. So as you sit here today, you have no
9 knowledge whether he, giving him the benefit of the
12:03 10 doubt, made a mistake in giving you the password for
11 this data compression technology CD?
12   A. I believe that password for that one was
13 the name of his mother. I think that's what he told
14 me. Something like that. Something he would know.
12:03 15   Q. How about the name of his wife, Jale?
16   A. I have no idea.
17   He had plenty, I'm sure.
18   THE COURT: It's time.
19   MR. FLYNN: Thank you, your Honor.
12:03 20   THE COURT: We'll --
21   MR. PEEK: Your Honor, may this witness be
22 excused?
23   THE COURT: I don't know.
24   Are you finished with this witness?

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1   MR. FLYNN: No, I'm not, your Honor.
2   THE COURT: All right. Then, not.
3   MR. PEEK: Your Honor, are we going to
4 have more time than today?
12:03 5   THE COURT: No, I don't have planned -- I
6 hadn't planned any more time than today.
7   I'm interested in a couple of important
8 pieces of information to me.
9   I'm interested in what "it" is, whether
12:03 10 "it" is a tangible thing.
11   I'm interested in knowing whether or not
12 "it" was developed while he was working for eTreppid.
13   And I'm interested in knowing whether or
14 not the agreement that was entered would have
12:04 15 excluded that technology or the basis for that
16 technology.
17   I've seen the arguments in the briefs, but
18 I haven't heard much elaboration on that and, to me,
19 those are the kinds of simple things that I may need
12:04 20 to decide in making a decision about whether or not
21 you get your injunction or you don't get your
22 injunction.
23   MR. PEEK: And we're trying to do that,
24 your Honor.

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1   What Mr. Venables was just talking about
2   here today primarily was -- it was on a SRCSERVER, it
3   was deleted off of the SRCSERVER, there are others
4   who will connect up what went on to that SRCSERVER,
12:04 5   but we spent just three hours with Mr. Venables on
6   what was really a very discrete area of inquiry about
7   the fact that it was there and it was deleted.
8   THE COURT: All right. But --
9   MR. PEEK: Mr. Trepp will be testifying.
12:04 10   THE COURT: Here's what I --
11   MR. PEEK: Mr. Frye will be testifying.
12   THE COURT: -- need to understand, and it
13   probably will reflect my ignorance with regard to
14   this subject, but what is the "it" that you want
12:05 15   back?
16   In other words, if I were to write an
17   order today and said, "Okay, Mr. Montgomery has to
18   give 'it' back," what is "it" and what would "it"
19   look like if "it" was sitting in front of me?
12:05 20   MR. PEEK: It would look just exactly the
21   way Sloan testified it was, your Honor, which is
22   lines of code.
23   THE COURT: On a piece of paper?
24   MR. PEEK: No, no.

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1   THE COURT: On a disk?
2   MR. PEEK: On disk.
3   Actually, it's an electronic file, so it
4   would be either on a disk --
12:05 5   THE COURT: Okay.
6   MR. PEEK: It could be on a hard drive, it
7   could be on a CD RAM, could be on a number of ways to
8   store the information.
9   THE COURT: All right.
12:05 10   MR. PEEK: But it would be -- as he said,
11   it's source code within which are written many, many
12   lines of code which tell that code how to operate,
13   how to perform its functionality.
14   Now, we'll get into a little bit --
12:06 15   THE COURT: Would that include all the
16   codes?
17   MR. PEEK: Yes, it's all the codes.
18   THE COURT: For the video, the audio,
19   the --
12:06 20   MR. PEEK: Yes, because all of those were
21   the property of eTreppid, and all of that was, as he
22   said, deleted off the files.
23   THE COURT: Well, we'll --
24   MR. PEEK: And I know that he's talked

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1   about --
2   THE COURT: I'm sorry for interrupting
3   you.
4   MR. PEEK: It was deleted off of the
12:06 5   servers.
6   THE COURT: All right. Well, we'll see
7   where we go with this.
8   I just have got that meeting. If we've
9   got to run a little late tonight, I'll talk to my
12:06 10   staff about what their schedule is, if we can
11   accommodate --
12   MR. PEEK: I want to get to the merits,
13   your Honor.
14   THE COURT: Well, that's --
12:06 15   MR. PEEK: Just exactly what you're
16   talking about.
17   THE COURT: -- kind of what my concern
18   was.
19   We'll be in recess until about 1:30.
20   (Noon recess.)
21   --oOo--
22
23
24

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1   RENO, NEVADA; Tuesday, February 7, 2006; 1:30 P.M.
2   --oOo--
3
4   THE COURT: All right. Mr. Flynn, you
13:29 5   said you had some more questions?
6   MR. FLYNN: Your Honor, in the interest of
7   time, we'd like to reserve on Mr. Venables subject to
8   recall.
9   THE COURT: All right. Call your next
13:29 10   witness.
11   You can step down, sir.
12   MR. PEEK: Your Honor, may he be excused,
13   subject to recall? May he be allowed to leave?
14   THE COURT: Yes.
13:29 15   MR. PEEK: Because I know that he
16   doesn't -- obviously because he wants to recall him,
17   he wants him out of the courtroom.
18   So may he be allowed to leave?
19   THE COURT: Yes.
13:29 20   MR. PEEK: Thank you.
21   (Witness excused.)
22   (Discussion off the record.)
23   MR. PEEK: Actually, Mr. Steiner went to
24   get him so he'll walk in with Mr. Steiner, so -- I

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1 hope.

2   THE BAILIFF: There's nobody out there

3 now.

4   MR. PEEK: He was right there.

13:30 5   Sorry, your Honor.

6   THE COURT: That's all right.

7   MR. PEEK: I thought he was right there.

8   THE COURT: It's okay.

9   MR. FLYNN: Your Honor, while they're

13:30 10 looking, we tried to get you some cases on the

11 governmental privilege secrecy, military secrecy

12 privilege, and I think they were given to your

13 secretary as you were walking out, so Mr. Pulver is

14 going to grab them and get them up to you.

13:30 15   THE COURT: All right.

16   (The witness was sworn.)

17   THE COURT: All right. Please take the

18 witness stand over there.

19   There's some water there --

13:31 20 THE WITNESS: Thank you.

21   THE COURT: -- if you want to have a

22 little bit.

23   Make sure when you're testifying that you

24 speak up so that everybody can hear you.

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1   THE WITNESS: Okay.

2   THE COURT: And try not to speak at the

3 same time as the lawyer.

4   THE WITNESS: Okay.

13:31 5   MR. PEEK: Your Honor, may I move this?

6   THE COURT: Oh, certainly.

7   MR. PEEK: Thank you.

8   MR. FLYNN: May I approach the bench?

9   THE COURT: Yes.

13:31 10 Thank you.

11   MR. FLYNN: You're welcome.

12

13   ZEHANG SUN,

14 called as a witness, having been first duly sworn,

15   testified as follows:

16

17   DIRECT EXAMINATION

18 BY MR. JAKOPIN:

19   Q. Would you tell the Court your name?

3:31 20   A. Oh, my name is Zehang Sun.

21   Q. And where do you currently work?

22   A. eTreppid Technology.

23   Q. And what's your position?

24   A. I'm the vice president of engineering.

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1   Q. Once you graduated from high school, what

2 was the first school that you went to?

3   A. Actually, before the year 2004, most of

4 the time I was in school.

13:32 5   From year 1990 to 1994, I was

6 undergraduate in university in China called --

7   (Discussion off the record.)

8   THE COURT: Can you spell that?

9   THE WITNESS: Northern, N-o-r-t-h-e-r-n.

13:32 10 THE REPORTER: Northern.

11   THE WITNESS: Northern Giaogong,

12 G-i-a-o-g-o-n-g, University.

13   And then my major was telecommunications

14 and information theory.

13:32 15   After that, I went to the graduate school

16 of the same university and my major was digital

17 signal processing, and that was -- I graduate -- got

18 my first Master of Engineering from that university

19 in year 1997.

13:33 20   After that, I received a fellowship from

21 University in Singapore. The name of university is,

22 sorry, Nanyang Technology Core University.

23   Nanyang, N-a-n-y-a-n-g, Technology Core

24 University.

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1   And I spend there about two years and got

2 my second Master's Degree that was three-dimensional

3 image processing and computer vision.

4   In year 2000, I receive another full

13:33 5 assistanceship from University of Nevada-Reno here,

6 and that's why I went to the graduate school here;

7 spent another four years.

8   I got my Ph.D. degree. My degree was in

9 computer science and engineering.

13:33 10 BY MR. JAKOPIN:

11   Q. Did you write a dissertation for your

12 Ph.D.?

13   A. Yes. My dissertation was about feature

14 subset selection for vehicle detection. That was a

13:34 15 grant -- that was a project supported by Ford Motor

16 Company's Scientific Research Lab.

17   In year 2001, I got an internship from

18 Ford Motor Company and I spent three month there.

19   After three month, my boss in Ford think

13:34 20 my work had great potential and that's why he give my

21 advisor, Professor George Bebbis (phonetic), UNR, a

22 grant to further support my work.

23   My work was vehicle -- for the vehicle

24 detection and classification.

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1   Q. You talked about vehicle detection, and
2 you used the word feature.
3   Can you tell the Court what you mean by
4 the word feature?
13:34 5   A. Feature is a rather abstract -- it's a
6 concept. How we direct the object is a terminology
7 in the work of pattern recognition and image
8 processing.
9   For example -- I think we can maybe have
13:35 10 an example here -- if we try to distinguish between
11 human and, let's say, an animal, the feature could be
12 the face, the leg, the head; that could be a feature.
13   Q. And so you were, in your dissertation,
14 talking about features of the vehicles?
13:35 15   A. Yes.
16   Q. Correct?
17   A. Yes.
18   And that --
19   Q. Go ahead.
13:35 20   A. And my dissertation was about automatic
21 feature subset selection, and basically my work on
22 that product for three year.
23   After that, my work was invited into
24 fourth generation Smart Car. There was auto show in
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1 2002 in Chicago and my work was there.
2   Q. And what did that work do?
3   A. That work is detect vehicles and the -- in
4 front of the -- in front of vehicle was my software
13:36 5 running.
6   Q. And what was that -- you say software
7 running; could you explain to the Court how that
8 software ran?
9   A. That software is a -- the software --
13:36 10 software is just a sequence of instructions and
11 that -- and the interface between human and the
12 machine, and we can do some coding, use a software,
13 and after the coding is done, the machine convert
14 that into machine language, which first step going to
13:37 15 be the assembly language.
16   After they get so many languages, further
17 they can convert that to machine code because there's
18 no way human can read machine code, but machine can
19 read machine code.
13:37 20   That's basically -- machine -- how the
21 machine running is based on that machine code.
22   The code is just bunch of numbers, like
23 83, 100, those kind of things.
24   Q. The code that you referred to that is the
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1 human readable code?
2   A. Yes.
3   Q. Is that called source code?
4   A. Yes.
13:37 5   Q. And could you explain what that is?
6   A. Source code is just a, once again,
7 interface between human and machine.
8   Source code is a bunch of smaller
9 functionalities, you know, make sure -- each smaller
13:37 10 function doesn't make any sense, but the source code
11 is like combination of those kind of smaller
12 functions.
13   The combination of those functions going
14 to serve a purpose. That's basically why people
13:38 15 write the source code.
16   Q. And so would each of the combination of
17 functions have a number of different lines of source
18 code --
19   A. Yes.
13:38 20   Q. -- that are associated with it?
21   A. Yes.
22   Q. And then those different functions
23 together provide the overall function of the program?
24   A. Yes, that's correct.
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1   Q. Now, you've worked at eTreppid since when?
2   A. I officially joined the company 1st
3 January 2004.
4   Before that, I work on the consultant for
13:38 5 about maybe three weeks?
6   Yeah, three weeks.
7   Q. And what was your position?
8   A. Vice president of engineering.
9   Q. And have you held that position
13:38 10 continuously while you've been at eTreppid?
11   A. Yes.
12   Q. And what have your responsibilities been?
13   A. I think my job falls into two different
14 categories.
13:38 15   The first category is like a -- my boss
16 gave me some work to do.
17   And the second category, I think, the
18 eTreppid might want this kind of work, and these two
19 kind of works. I handle that differently, and for
13:39 20 the work, my boss let me to do first time is evaluate
21 feasibility, whether or not we can handle that.
22   Sometime the requirement from the
23 government -- from the customer is not very realistic
24 and, for example, you know, they -- sometimes they
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1   say, "Okay, can you detect a person?" But the person

2   in that image may be only five-by-five pixels big.

3   If this things happen, I would say, "Okay,

4   we cannot do this; this is the reason."

13:39 5   And I also give some suggestions, and this

6   going to be the first step.

7   If we think the product is feasible, we're

8   going to the second step. The second step is going

9   to analyze the product further.

13:40 10   Most time, I'm going to come up with a

11 tree structure.

12   For example, if the object -- if the goal

13 is "A," then I need to figure out, you know, how to

14 do "A." What we need to do, maybe, we need to get

13:40 15 "B" and "C" down first.

16   THE COURT: Excuse me. Can you slow down

17 a little bit? I think the court reporter is having

18 trouble keeping up with you.

19   If you'd slow down just a little bit.

13:40 20   THE WITNESS: Okay. So it's like the

21 tricks are -- the first time is the goal would be

22 "A," but there's no way we can jump to "A." We need

23 to get "B" and "C" down first.

24   If we need to get "B" and "C" down, we

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1   might need "D" and "E," those things basically, and

2   analyze these whole things, I'm going to get a tree

3   structure.

4   After I get this, I need to further

13:40 5   analyze, you know -- for example, each note on the

6   tree, "B," "C," "D," "E," they are a subtask, is a

7   sub-algorithm.

8   We need to evaluate whether or not we have

9   good algorithm to finish that task. If we do, then

13:41 10 basically we're done with this step. We can --

11 confident we can do this.

12   Next step, most time, is I'm going to

13 write a code using a tool, a language called MATLAB,

14 and the Math -- with the MATLAB coding period --

13:41 15 maybe, you know, after we need -- I need to do each,

16 every subfunction, test each, every subfunction, then

17 combine all those things together, see whether or not

18 the whole thing meet our goal.

19   If they do, then I'm done.

13:41 20   If they don't, I need to go back and, you

21 know, figure out why.

22   We do this back and forth couple times,

23 and after this, I'm going to, you know, present the

24 result to my boss, and if my boss think that's okay,

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1   then next step is, we try to convert that into a "C"

2   code, C++ code.

3   And until that step, basically I'm going

4   to alter my hand -- alter my hand, I only responsible

13:42 5   for, you know, the people -- depends on algorithm so

6   the engineer can convert that to "C" code, and then

7   maybe, you know, the customer requires, you know,

8   interface, and I'm not responsible for that.

9   BY MR. JAKOPIN:

13:42 10   Q. All right. You said a lot there.

11   Why don't we try to break it up a little

12 bit because --

13   THE COURT: I mean, I don't want to

14 curtail your examination, but what does all this have

13:42 15 to do with the issues that we're trying to decide

16 here?

17   MR. JAKOPIN: Well, your Honor, this has

18 to do with the writing of software, of source code of

19 eTreppid that specifically relates to pattern

13:42 20 recognition, to anomaly detection, and this is a

21 witness who has written code that is used for that,

22 and so --

23   THE COURT: Well, I think it's only fair

24 for me to tell you, I really didn't understand about

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1   90 percent of what he said, and part of it is my lack

2   of training and education in the area that he's

3   talking about, and two, part of it is language and

4   that's not anybody's fault, but --

13:43 5   MR. JAKOPIN: I'll try to break it up

6   into --

7   THE COURT: -- I'm just trying to tell you

8   what I would want to know if I were in your shoes.

9   MR. JAKOPIN: Uh-huh.

13:43 10   Well, thank you, your Honor.

11   THE COURT: And so, again, the technical

12 parts of it, if you think I need to know about them,

13 it's your time, but I'm just simply saying that I

14 would appreciate it if you can avoid that, to the

13:43 15 extent that you can, and still explain to me what I

16 need to know about whose property this is, how it

17 became their property, when it was developed, what

18 about this patent or this copyright from 1985; those

19 are the kinds of things I'm going to have to decide.

13:43 20   What he said here today, I, frankly, I

21 tell you very honestly do not understand.

22   So, you know --

23   MR. JAKOPIN: Thank you, your Honor.

24 BY MR. JAKOPIN:

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1 Q. You just described steps that you used to
2 make software at eTreppid, correct?
3   A. Yes.
4 Q. And is that source code that is generated
13:44 5 at eTreppid?
6   A. Yes.
7 Q. You generate one kind of source code into
8 what you called MATLAB?
9   A. Yes, I used MATLAB for to test my ideas.
13:44 10 Q. Okay. And then another kind of source
11 code that that is converted to is called C++?
12   A. Yes.
13 Q. Correct?
14   A. Yes.
13:44 15 Q. Now, is there software that you have
16 written at eTreppid that then uses that process to
17 move pattern recognition?
18   A. I think most of my -- almost all my work
19 was related to pattern recognition.
13:44 20 Q. Would you describe some of the different
21 kinds of software that you wrote at eTreppid that
22 relates to pattern recognition?
23   A. For example, face detection is trying to,
24 you know, detect the face in lab video, and also

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1 motion detection.
2   So if someone walk into a, you know, a
3 restrict zone, and also image registration, if, you
4 know, the video was taken from a moving platform.
13:45 5   All those code, actually, I was
6 responsible.
7 Q. And so registration was one kind of source
8 code relating to pattern recognition that you wrote?
9   A. Yes.
13:45 10 Q. And software that would detect the face of
11 a person was another kind of source code that you
12 wrote?
13   A. Yes.
13:45 15 Q. And then another kind of source code that
14
you wrote relating to pattern recognition was for
16 motion detection?
17   A. Yes.
18 Q. Did you write any source code at eTreppid
19 relating to tracking of a vehicle?
13:45 20   A. Yes, I did.
21 Q. Okay. So those different kinds of source
22 codes, you would write in what was called MATLAB?
23   A. Yeah, the first step -- the first step is
24 in MATLAB.

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1 Q. And the second step for all of those could
2 be converted to C++?
3   A. Yes.
4 Q. Okay. Is there a kind of application that
13:46 5 you've done at eTreppid called anomaly detection?
6   A. Yes. There was something I had done in
7 June two thousand -- I think June last year.
8   Q. And what was that?
9   A. It's try to detect something and -- which
13:46 10 not supposed to be a certain -- not supposed to
11 present in a certain image.
12   Q. So it's something that you don't expect to
13 see in the picture?
14   A. Right.
13:46 15 Q. And that's called anomaly detection?
16   A. Right.
17   Q. And so you wrote source code for that at
18 eTreppid?
19   A. Yes, I did.
13:46 20 Q. Okay. And is that anomaly detection a
21 form of pattern recognition?
22   A. Yeah. Anomaly detection can consider only
23 one kind of pattern recognition, pattern
24 classification.

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1 Q. Okay. Now, was all the work that you have
2 done while at eTreppid your original work?
3   A. Yes.
4 Q. Did you use any source code that
13:47 5 Mr. Montgomery provided you in doing that work?
6   A. As far as I'm aware, no.
7   Q. Okay. Does eTreppid own the source code
8 that you wrote?
9   A. Yes, I think so.
13:47 10 Q. Who reports to you on your team at
11 eTreppid?
12   A. All the engineer report to me.
13   And do you want the name?
14 Q. Yes, please.
13:47 15   A. Okay. Navin, Saurabh, Krishna, Michael,
16 "Yumi", Suchita; all those engineers report to me.
17 Q. Do certain of those engineers work on
18 projects that relate to source code of pattern
19 recognition?
13:47 20   A. Yes. Navin and Saurabh and Krishna, Yong
21 Mian.
22   Q. Okay. Do those engineers have work
23 stations that they use to save their source code on?
24   A. Yes.

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1 Q. Do they, then, save source code that
2 they've worked typically on their machines on a
3 server?
4   A. Yeah, I think so. Yes.
13:48 5 Q. And do you know the name of that server at
6 eTreppid?
7   A. I think called SRCSERVER or --
8 Q. Okay.
9   A. Yeah, called SRCSERVER.
13:48 10 Q. Are you aware of whether the engineers are
11 now being able to work on the source code that is
12 stored on the SRCSERVER?
13   A. That was couple weeks ago, and Krishna
14 told me his code was gone.
13:48 15 Q. Okay. Any other engineers --
16   MR. FLYNN: Objection, your Honor;
17 hearsay.
18 BY MR. JAKOPIN:
19 Q. -- tell you their code was gone?
13:48 20   MR. FLYNN: Hearsay.
21   THE COURT: It is hearsay.
22   Sustained.
23 BY MR. JAKOPIN:
24 Q. Have you been able to access source code

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1 from the SRCSERVER?
2   A. That, I cannot -- what I can access is
3 only there's a directory for me. I can only access
4 that directory, but other people's work, I cannot.
13:48 5 Q. Okay. Is that directory for you something
6 that you can access today on the SRCSERVER?
7   A. I think so, but I didn't try that.
8 Q. Were you involved in looking for source
9 code that had been deleted at the company?
13:49 10   A. Sorry, I didn't understand this question.
11 Q. Were you involved in looking for any
12 source code that had been deleted at the company?
13   A. Oh, no.
14 Q. Okay. Did Mr. Montgomery ever provide you
13:49 15 any source code written in MATLAB?
16   A. No.
17 Q. Okay. Were you aware of Mr. Montgomery
18 ever providing you a program that was in C++ that had
19 been converted from MATLAB?
13:49 20   A. No.
21 Q. Okay. Could you explain to the Court the
22 type of instructions that Mr. Montgomery would give
23 to you for projects?
24   A. Most time is he give me a -- show me, not

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1 give me -- show me a bunch of image sequence, video
2 sequence, and so, okay, we can see there's a vehicle
3 there, we can see there's walking people over there.
4   Can we detect that? Can we track that.
13:50 5   That is -- normally this is like that.
6 Q. Did he give you any direction on how to
7 detect that?
8   A. As far as I remember, no.
9 Q. Was that something that you were then
13:50 10 responsible for, in fact, determining how to do it?
11   A. Yes, yes.
12 Q. And you would then do that, and from that,
13 you would then write your MATLAB script?
14   A. Yes.
13:50 15 Q. And then from that, the engineers would
16 take that MATLAB script and put it into C++?
17   A. That's correct.
18 Q. And from that, then, the software for that
19 particular application would be developed?
13:50 20   A. Yes.
21 Q. Okay. And there were many different
22 pattern recognition applications that were developed
23 in that way?
24   A. Yes. And almost every one -- I think

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1 every piece of application, every piece of code is
2 done in that way.
3 Q. And that would include the one that was
4 detecting the face of the person?
13:51 5   A. Yes.
6 Q. And the one that was doing the motion
7 detection?
8   A. Yes.
9 Q. And the one that was doing the tracking of
13:51 10 a vehicle?
11   A. Yes.
12 Q. As well as the registration process?
13   A. Yes.
14   MR. JAKOPIN: Okay. I have nothing more.
13:51 15   THE COURT: Mr. Flynn.
16
17   CROSS EXAMINATION
18 BY MR. FLYNN:
19 Q. Is it Mr. Sun?
13:51 20   A. Yes. Doctor.
21 Q. Dr. Sun. Thank you.
22   You have no type of security clearance
23 from the U.S. Government?
24   A. No, I don't.

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1   Q. You have -- you're not a U.S. citizen?

2   A. No.

3   Q. Now, let me see if I understand your

4 testimony.

13:51 5   I had a little hard time following it,

6 too, but let me see if I can understand.

7   A. Okay.

8   Q. You were working on creating lines of

9 codes with source codes based on some type of an

13:51 10 algorithm technology for facial recognition?

11   A. Yes, that's one of my tasks.

12   Q. You were working on creating lines of code

13 with source codes based on algorithms for object

14 tracking?

13:52 15   A. Yes.

16   Q. On your own work station?

17   A. No, I would not say that, because as I

18 explained before, that actually is a teamwork.

19   I do part of that work and my group do

13:52 20 part of that work.

21   Q. And you never worked with Mr. Montgomery?

22   A. What do you mean by that? He was my boss.

23   Q. But he never -- from what I just heard --

24   Maybe I misunderstood something.

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1   A. Uh-huh.

2   Q. He never gave you anything for you to do

3 the work you just described?

4   A. I'm confused. I don't think I understand

13:52 5 your question.

6   The things -- part of my work is like he

7 gave to me, let me do that.

8   Q. What did he give you?

9   A. It's like, most time there's a radio

13:53 10 sequence --

11   Q. Well --

12   A. -- and let me do it.

13   Okay, you know, there's a video sequence,

14 and can you do this?

13:53 15   Things like that.

16   Q. I thought you said that he didn't give you

17 anything that you needed to do your work.

18   Maybe I misunderstood that.

19   A. Oh, what I mean is, in the level algorithm

13:53 20 because it's like, any people can ask me, let's say,

21 okay, we have, you know, video sequence, can we track

22 this person? Can we, you know, detect this person?

23   This most of the time, this is Dennis let

24 me do.

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1   Q. So you created your own source codes.

2   That's where I think I want to get.

3   All -- you did it by yourself?

4   A. Part of that, yes, I did by myself.

13:53 5   Q. So you got your own source codes?

6   A. Oh, yes, I think that's true.

7   Q. Right now, you've got your own source

8 codes for all the work you've done?

9   A. That was talking about maybe a couple

13:54 10 weeks ago, but now I think part of my code also

11 missing.

12   Q. What part is missing?

13   A. For example, the anomaly detection, I

14 think I don't see that any more in my computer.

13:54 15   Q. Is that something that's not -- the

16 anomaly detection software that's no longer in your

17 computer, is it something you created?

18   A. Yes, I did.

19   Q. In the last few weeks, have you recreated

13:54 20 it?

21   A. No, not yet.

22   Q. You can recreate it?

23   A. Yes, I can.

24   Q. How long will it take you?

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1   A. I really -- I really don't know, because

2 that depends on -- this is only part of the things.

3   My work is, in the algorithm level, is

4 like, I do some protecting and get the algorithm

13:55 5 down. The actual source code is different from the

6 algorithm.

7   Algorithm is like a high level thing and

8 if I'm confident we can do this, which means I'm

9 confident we can find algorithm to do that.

13:55 10   The actual coding actually for some other

11 engineers, I mean, C++, not in the MATLAB. MATLAB is

12 a very high level source code. It's like a --

13 it's --

14   Can I use an example here?

13:55 15   Q. Sure.

16   A. Okay.

17   Q. I'm just trying to get edified, and I

18 believe the judge is trying to get educated, too.

19   Go ahead.

13:55 20   A. Okay. MATLAB is like, for example, is

21 just a tool and let's say if I want to build a house,

22 the MATLAB maybe have some, you know, building

23 blocks, like windows, foundation.

24   If I want test my design, just in -- pull

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1 that particular window, pull that particular
2 foundation, pull them together, see whether or not
3 that is good, and the things, you know, if in come
4 the "C" code, people have to actually build that
13:56 5 window.
6   That itself might take, you know, I don't
7 know, some time. That's why, you know, I can get the
8 MATLAB code done, maybe, you know, in couple weeks,
9 but I really don't know how soon they can do the "C"
13:56 10 code.
11   Q. How many lines of code make up -- how many
12 lines of code make up an algorithm?
13   A. That algorithm?
14   You're talking about the MATLAB or are you
13:56 15 talking about "C" code?
16   Q. What you were working on.
17   A. MATLAB.
18   That is not very big; maybe, you know,
19 couple hundred.
13:56 20   Q. Okay. Do you have those lines of code?
21   A. At this moment?
22   Q. Yes.
23   A. I think I might have. I really don't --
24 I'm not sure about that.

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1   Q. Well, have you checked?
2   A. What?
3   Q. Have you checked to see whether you have
4 these lines of code that make up the algorithms that
13:57 5 you worked on?
6   A. In my machine -- what I mean, in my
7 machine I don't think I have, but I think last year
8 my machine got cloned couple times.
9   I really don't know whether or not they
13:57 10 still have that code in those clone disk.
11   Q. So in the last -- have you been looking
12 for these lines of code on this algorithm for the
13 last few weeks?
14   A. No, because I was on vacation.
13:57 15   Q. So you don't know whether anything is
16 missing or not?
17   A. I --
18   Q. It could still be at eTreppid.
19   A. In last several days, my engineer told me
13:57 20 their code was gone.
21   My code --
22   MR. FLYNN: I object and move to strike,
23 your Honor.
24   THE COURT: That's all right.

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1   MR. FLYNN: His engineer told him.
2   THE COURT: That's all right. I'm not
3 going to consider it for the truth of it, but go
4 ahead.
13:57 5 BY MR. FLYNN:
6   Q. Mr. Sun, what we're trying to find out --
7   A. Uh-huh.
8   Q. -- is anything that you created, one, you
9 can recreate, correct?
13:57 10   A. Oh, yes.
11   Q. And two, anything that you created, as of
12 the moment, we don't know whether it's there, or we
13 don't know based on your personal knowledge?
14   A. I think, based on my personal knowledge, I
13:58 15 think it's not there.
16   Q. Now, do you know how many types --
17   Do you know anything about the government
18 contracts at all?
19   A. No, I don't because I'm not supposed to,
13:58 20 you know, ask anything there. It's like, I just do
21 the things my boss let me to do.
22   Q. So in terms of, say, object tracking --
23   A. Uh-huh.
24   Q. -- do you know how many components of

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1 object tracking eTreppid was involved in, some having
2 to do with government contracts, some having nothing
3 to do with government contracts?
4   A. As I said before, no, I don't know about
13:58 5 that.
6   Q. Did you back up your work station?
7   A. Actually, my -- first, my computer is not
8 a work station and I didn't back up; the company back
9 up.
13:58 10   I don't have anywhere to back up.
11   Q. Okay. The company backed it up?
12   A. Yeah.
13   Q. Where is the -- have you checked the
14 backup that the company did on your work product?
13:58 15   A. That out of my hand. I'm not allowed to
16 do that, because basically what was -- what I
17 responsible is the algorithm in those level, and
18 whether or not they -- how they back up the software,
19 which I don't know.
13:59 20   Q. Was Patty Gray ever on your computer?
21   A. What do you mean by "on my computer"?
22   Use my computer or --
23   Q. Yes, without your permission?
24   A. As far as I'm aware, no.

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1   Since, you know, I do have a shared
2 directory, that's for sure.
3   Q. Since we don't know if there's anything
4 missing right now --
13:59 5   A. I think we know something missing, because
6 at that time, I was in hospital, couple people work
7 under me call me. They say --
8   MR. FLYNN: Well, I object and move to
9 strike, your Honor.
13:59 10   THE WITNESS: Okay.
11   MR. FLYNN: But let them bring them in if
12 they --
13   THE COURT: I'm going to hear the
14 evidence. There's not a jury here. I'll give it the
14:00 15 weight I think it's entitled to.
16   MR. FLYNN: Okay.
17 BY MR. FLYNN:
18   Q. Let me ask you this, sir.
19   If you think there's something missing
14:00 20 that you need, in the last two weeks, have you made
21 any effort to go get it?
22   A. As I said before, I was on vacation last
23 couple weeks. My daughter was born 9th of January.
24 I was on vacation.

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1   Q. Okay. Congratulations on your daughter.
2   A. Thank you.
3   Q. But in the next few weeks, do you know of
4 any reason why you cannot go find it?
14:00 5   A. I think I might want to try, but I really
6 don't know whether or not I can find that.
7   Q. So as of today's date, for purposes of
8 this hearing, you don't know?
9   A. No.
14:00 10   MR. FLYNN: Thank you.
11   THE COURT: Redirect?
12   MR. JAKOPIN: No, your Honor.
13   THE COURT: May this witness be excused?
14   MR. JAKOPIN: Yes.
14:00 15   MR. FLYNN: Yes, your Honor.
16   THE COURT: You may step down.
17   You're excused. Thank you for coming.
18   THE WITNESS: Okay.
19   (Witness excused.)
14:01 20   THE COURT: Call your next witness.
21   Step forward, sir, and be sworn first.
22   THE WITNESS: Okay.
23   (The witness was sworn.)
24   THE COURT: Thank you.

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1   KENDALL A. ROMAN,
2 called as a witness, having been first duly sworn,
3   testified as follows:
4
14:02 5   DIRECT EXAMINATION
6 BY MR. JAKOPIN:
7   Q. Would you state and spell your name,
8 please.
9   A. Kendall A. Roman.
14:02 10   MR. FLYNN: Your Honor, maybe it would be
11 quicker for me to put my objection in now.
12   I believe this is the expert. I think, at
13 this point in proceeding, let's -- it's such a waste
14 of time to do an expert.
14:02 15   I would submit, if we just put Mr. Trepp
16 and Mr. Montgomery on the witness stand, for judicial
17 efficiency, cut through all of this stuff and get to
18 the bottom of this.
19   We have not been disclosed who he is, any
14:02 20 information about him. We've been given nothing. To
21 put an expert on, on the current state, foundational
22 state of the record, is purposeless.
23   THE COURT: Well, I don't know what he's
24 going to say and so, I mean, it's just like the --

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1 you know, "I object."
2   "What's your grounds?"
3   "I'm not going to tell you."
4   I don't know whether he has something to
14:03 5 say that will be helpful to the Court or not. He may
6 or may not, and so I can't just arbitrarily restrict
7 either side from putting somebody on the witness
8 stand because of their status as a lay witness,
9 expert witness, whatever.
14:03 10   Let's go a little bit and we'll see
11 what --
12   Well, let's put it this way.
13   Counsel, can you tell me what he's going
14 to -- what's the subject matter going to be?
14:03 15   MR. JAKOPIN: Yes, the subject matter is
16 background to explain to the Court about source code.
17   It's to show he's had conversations with
18 various employees at the company, and in his own
19 language to explain what it is that has occurred at
14:03 20 the company, and to then be able to provide to the
21 Court his opinion on the damage that has occurred as
22 a result of what has been deleted.
23   THE COURT: All right. Well, let's take
24 it a step at a time.

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1   Let's see where we go with it.
2   BY MR. JAKOPIN:
3   Q. Can you give me your educational
4   background since high school, please.
14:04 5   A. Yes. I have a Bachelor's Degree in
6   computer science from Brigham Young University, 1982,
7   and that degree included both hardware and software
8   databases and inter-computer communications, which is
9   called networking.
14:04 10   Q. Do you have any experience with various
11   different languages that are used for source code
12   programming?
13   A. Yes. I've studied and programmed in
14   numerous languages, including the ones at issue in
14:05 15   this case, C++.
16   Q. Are you familiar with different computer
17   hardware platforms?
18   A. Yes, I am.
19   Q. And how about different computer software
14:05 20   platforms?
21   A. Yes.
22   Q. Is there an area of your expertise that
23   relates to computer forensics?
24   A. Yes. For the last six years, I've been
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1   doing expert witness consulting, as well as regular
2   business consulting, and a lot of that work has been
3   as a computer forensic expert.
4   I've worked on cases for the government
14:05 5   where I've done data recovery, in particular, video.
6   I was hired by the State of California to
7   recover video from security cameras at one of their
8   correctional facilities, and I've testified regarding
9   that forensic recovery process and also the analysis
14:05 10   I've done of the recovered data.
11   I've also worked on cases for the
12   Department of Defense, particularly the Department of
13   the Navy, as a defense expert.
14   Q. Have you worked on technologies relating
14:06 15   to what we've heard today as software compression?
16   A. Yes. I've been working with, in
17   particular, audio and video compression for over a
18   decade.
19   I have a number of pending patents in the
14:06 20   area of video compression, video transmission, and I
21   have an FDA approved medical device that I was the
22   primary inventor and developer of.
23   Q. And how about with respect to pattern
24   recognition? Do you have background with pattern
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1   recognition?
2   A. Well, pattern recognition has kind of a
3   broad -- a broad scope.
4   All data compression, at some level, is
14:07 5   looking for patterns of material that can be stored
6   in a more efficient way.
7   A very simple way of doing compression is
8   to look for a series of zeroes in a row and replace
9   that series of zeroes with a number that represents
14:07 10   that run length of zeroes.
11   There's pattern recognition built into
12   almost any compression algorithm.
13   Then, there's this more specific pattern
14   recognition where we're looking for a face or an iris
14:07 15   or things like that, and that kind of pattern
16   recognition has just come to the forefront in the
17   last few years.
18   MR. JAKOPIN: I'd like to tender him, your
19   Honor, as an expert.
14:07 20   THE COURT: I'm satisfied.
21   Go ahead.
22   MR. JAKOPIN: All right. Thank you.
23   BY MR. JAKOPIN:
24   Q. Getting back to source code, could you
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1   explain to the Court how source code is used by the
2   computer?
3   A. Yes. Computers run programs, basically
4   that's what they're designed to do, and the computer
14:08 5   program is simply a series of instructions for the
6   computer to execute.
7   In order for the human programmer to tell
8   the computer what to do, we could write the
9   instructions at a very low level, which is called
14:08 10   machine language; zeroes and ones that you've heard
11   about.
12   But that's very tedious, and so what we've
13   done is we've written these higher level languages
14   like C++ that actually use English words, and you can
14:08 15   put comments and various other ways of making it more
16   understandable for the human being.
17   So as a programmer, we, in the text file,
18   just like writing a letter, we write in the special
19   language -- it might be MATLAB or it might be C++ or
14:08 20   Java or one of these other languages -- and it's just
21   an electronic document that has a series of
22   instructions written in the high level language, and
23   as a -- as Sloan testified, there's a compiling that
24   takes these source code files and compiles them into
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1   object code and libraries, which then all get

2   compiled together to form the executable program.

3   And so when we talk about software, we

4   usually talk about the source code for the program,

14:09 5   as well as the intermediate files and the

6   executables.

7   Q. All right. Do you have an understanding,

8   based upon your conversations with different people

9   at eTreppid, as to what source code files were to be

14:09 10   deleted at the company?

11   MR. FLYNN: I object, your Honor.

12   THE COURT: I'm sorry?

13   MR. FLYNN: I object, your Honor.

14   THE COURT: Hearsay?

14:09 15   MR. FLYNN: Yes.

16   MR. JAKOPIN: He's an expert, your Honor.

17   He can rely on things that are not --

18   THE COURT: Well, I think you --

19   MR. LOGAR: Only as foundational.

14:09 20   THE COURT: If you're going to be

21   technical, I think you have to lay the foundation

22   that these are the types of things upon which he

23   would ordinarily rely in the practice of his

24   profession outside of the courtroom.

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1   MR. JAKOPIN: That's fine.

2   BY MR. JAKOPIN:

3   Q. In order to make a determination that

4   files have been deleted at a facility, what would you

14:10 5   normally do?

6   A. Well, it's an industry best practice to

7   have some type of source code control system or a way

8   of backing up your software.

9   Computers are machines and they break

14:10 10   down, and the storage medium such as magnetic disks

11   can actually decay over time, and so every software

12   company I've been involved in has some type of

13   repository where they store their software, and the

14   software is usually organized by projects and there's

14:10 15   limited access and there's some type of tracking.

16   And so when I was brought into this case,

17   I specifically asked the director of R&D and Dr. Sun

18   what software methodology was being used in this

19   case.

14:11 20   In my first startup company, I actually

21   was the manager of processing controls and tools and

22   I put such processes in place, and then throughout my

23   career, I've been the CTO, chief technology officer,

24   and in that position, I was the one responsible for

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1   making sure our software was secure.

2   So one of the first questions I asked the

3   employees was, "Did you have such an industry

4   standard software control procedure?"

14:11 5   Initially, they did, but under

6   Mr. Montgomery's direction, they set up this other

7   system that's not an industry standard methodology,

8   and that system was the SRCSERVER.

9   And on the SRCSERVER were numerous

14:12 10   directories for the subprojects in the ET Latest, so

11   that was the eTreppid Latest source code.

12   Q. All right.

13   A. And then also they had a work in progress,

14   which was the ET programmers.

14:12 15   THE COURT: Let me interrupt you for a

16   second.

17   What I'm concerned about is, if you were

18   hired simply to go to eTreppid and look at their

19   computers to determine whether or not something had

14:12 20   been deleted, outside of the context of litigation,

21   would you, in that process, speak to people who

22   worked there and rely upon what they told you in

23   order to practice your profession?

24   THE WITNESS: Yes, I would.

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1   THE COURT: I'm going to allow it.

2   MR. FLYNN: Your Honor, may I ask one voir

3   dire?

4   THE COURT: Yes, sir.

14:12 5

6   VOIR DIRE EXAMINATION

7   BY MR. FLYNN:

8   Q. In the practice of your profession, would

9   you first go to the chief technical officer of the

14:12 10   company in order to fulfill that function?

11   A. In practice, you don't always -- depends

12   on the size of the organization.

13   In practice, you don't always go to the

14   chief technology officer first, but in a small

14:13 15   company like this, I would have gone to the director

16   of development or CTO.

17   Q. And that, of course, is Mr. Montgomery?

18   A. Well, the director of R&D is who I talked

19   to, and that was, I believe, Sloan.

14:13 20   Q. But the chief technical officer of the

21   company, particularly with regard to this different

22   security detection system, was Mr. Montgomery; isn't

23   that correct?

24   A. My understanding is that he had left the

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1 company and was not -- not on site.

2 **Q.** So you never talked to him?

3 **A.** That's correct.

4 MR. FLYNN: Your Honor, I -- If you're

14:13 5 going to hear from Mr. Montgomery, without him having

6 spoken to Mr. Montgomery about what happened here,

7 which I believe is going to become perfectly clear to

8 the Court in five minutes, this is all useless

9 testimony.

14:13 10 THE COURT: Well, you see, I can't -- I

11 can't make that determination.

12 It seems to me that the foundation has

13 been laid for this testimony. Let me hear the

14 testimony, then we'll move on and then I'll make that

14:14 15 evaluation.

16 I just -- you know, as I'm sure you know,

17 I'm sure you're very experienced and you know that

18 as -- I mean, I knew as a lawyer when I came in that

19 the judge and the jury really didn't get it when they

14:14 20 first walked in, and I'm telling you, I'm in the

21 process of getting it, but I don't quite get it yet.

22 So I'm going to let these people develop

23 their case and I'll let you do the same thing.

24 If we have to go a little late to do that,

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1 we'll do it.

2 Go ahead.

3

4 CONTINUED DIRECT EXAMINATION

14:14 5 BY MR. JAKOPIN:

6 **Q.** Do you have an understanding of what

7 source code had been deleted at the company?

8 **A. As I mentioned before, there's this ET**

9 **Latest, which is the latest working version of the**

14:14 10 **source code, which would be the C++ code, and the**

11 **libraries, and then there was also the work in**

12 **progress code, which was in the ET programmers or ET**

13 **development directory.**

14 **My understanding is that the majority of**

14:14 15 **those directories -- the directories were still**

16 **there, but the -- or at least some of the directories**

17 **are still there, but the files themselves, the source**

18 **code files and the executable files had all been**

19 **deleted.**

14:15 20 MR. FLYNN: Objection to everything after,

21 "My understanding."

22 Hearsay, lacks foundation.

23 THE COURT: I previously indicated I'm

24 going to allow that testimony on the grounds that

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1 it's something upon which he could reasonably rely as

2 an expert. I'll give it the weight I think it's

3 entitled to.

4 Go ahead.

14:15 5 THE WITNESS: The other quantifiable

6 measure is the number of gigabytes.

7 A thousand bytes is a kilobyte, a million

8 bytes is a megabyte, a billion bytes is a gigabyte,

9 and then a trillion bytes is terabyte.

14:15 10 And so on the various servers, there were

11 terabytes of data and -- which is extremely large for

12 a small software company to have, and on those

13 terabyte servers, there were, I think, around 120

14 gigabytes of data, which is a large amount of source

14:16 15 code.

16 MR. FLYNN: I beg your pardon, which is --

17 THE WITNESS: A large amount of source

18 code.

19 MR. FLYNN: Thank you.

14:16 20 BY MR. JAKOPIN:

21 **Q.** Now, do you have an opinion as to -- do

22 you have an understanding that the source code has

23 not been available for the engineers to be working

24 with at the present time?

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1 **A. Yes. My understanding is that through the**

2 **process of events that happened between December 21st**

3 **and January 10th, the individual programmers' work**

4 **stations had had their hard drives wiped out and**

14:16 5 **zeroed, which makes it very difficult to recover, if**

6 **not impossible.**

7 **The SRCSERVER had been erased, and they're**

8 **attempting to recover some of that data, but they're**

9 **only recovering bits and pieces and that process**

14:17 10 **hasn't been completed.**

11 **And then there also was this RAID server**

12 **that was taken out, physically taken out of the**

13 **building, and my understanding is that has not been**

14 **returned.**

14:17 15 MR. FLYNN: Same objection.

16 I know you've already ruled, your Honor,

17 but just to preserve the record.

18 THE COURT: The record will reflect your

19 continuing objection --

14:17 20 MR. FLYNN: Thank you, your Honor.

21 THE COURT: -- if you want to do it that

22 way.

23 BY MR. JAKOPIN:

24 **Q.** Are you aware that there's a recovery

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1   process going on trying to recover this source code?

2   **A. Yes.**

3   Q. While that recovery process is ongoing, do

4   the engineers have the ability to work with that

14:17   5   source code that has been recovered?

6   **A. The short answer is no, they don't have**

7   **access to those machines because they've been taken**

8   **off the network.**

9   Q. And even, then, ultimately if only a

14:18 10   certain percentage of source code is recovered, is --

11   let's say 30 percent of the source code is

12   recovered -- would that imply that 30 percent of the

13   effort is recovered, as well?

14   **A. I've worked on projects where, let's say,**

14:18 15   **there's a hundred files, and because of a hard disk**

16   **failure, some of those files could not be recovered.**

17   **Filling in the missing pieces can be very**

18   **time-consuming. It has taken me months to get back**

19   **to a starting point when I've lost files in the past,**

14:18 20   **even for a very small case.**

21   **It literally took many months of being**

22   **able to figure out what was -- first of all, what's**

23   **missing; second of all, trying to recreate that, and**

24   **especially difficult if the employees who wrote that**

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1   **software in the first place either forgot, because**

2   **they did it a year ago, or worse case, they've left**

3   **the company and so the people who did the original**

4   **work are not available to recreate it.**

14:19   5   **So in this case, where there's been a**

6   **large amount of source code deleted and just**

7   **fragments of it being recovered, it could easily take**

8   **man years of effort to get back to a point where the**

9   **company could be as productive as they were on**

14:19 10   **December 21st.**

11   Q. Given that the company has been creating

12   source code for seven years with numerous employees,

13   would it be your opinion that that's a substantial

14   amount of source code to have to recreate?

14:19 15   **A. Yes.**

16   MR. JAKOPIN: I have nothing further for

17   this witness at this time, your Honor.

18   THE COURT: Do you have any questions?

19   MR. FLYNN: Just a couple.

14:19 20

21   CROSS EXAMINATION

22   BY MR. FLYNN:

23   Q. Do you have a security clearance, Mr. --

24   **A. I do not.**

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1   Q. And did you actually go check personally

2   all the hard drives?

3   **A. I've not been retained long enough to be**

4   **able to do that amount of work.**

14:20   5   Q. How long have you been retained?

6   **A. I was first contacted Thursday or Friday.**

7   Q. How much have you been paid so far?

8   **A. Nothing.**

9   Q. How much are you going to get paid for

14:20 10   your testimony here?

11   **A. The --**

12   Q. What's the deal?

13   **A. Oh, I'm being paid by the hour.**

14   Q. How much?

14:20 15   **A. Three-ninety an hour is the rate we charge**

16   **the client.**

17   Q. How many hours have you put in so far?

18   **A. I would say less than 40.**

19   Q. So you haven't checked any of the hard

14:20 20   drives.

21   Do you know how many hard drives there

22   are?

23   **A. I know that there's a -- I know that there**

24   **are 14 programmers, each of those programmers have**

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1   **two to three machines, and some of those machines**

2   **have multiple drives, so they have operating system**

3   **drives and then removable --**

4   Q. Were you in the courtroom --

14:21   5   **A. -- program drives.**

6   Q. Were you in the courtroom when

7   Mr. Venables said that 80 percent of the software is

8   still on the computers?

9   **A. I don't think I was in here at that**

14:21 10   **particular moment, but I know like the operating**

11   **system is still there.**

12   **It's the source code that's been deleted.**

13   Q. Source code of "it," but you don't know

14   what the "it" is yet either, do you?

14:21 15   **A. Well, the source code of each programmer's**

16   **work, and each of the programmers is working on**

17   **different components.**

18   Q. Basically, all you've done today is parrot

19   what the employees have already told you?

14:21 20   **A. Well, I also bring the light that I have**

21   **of understanding the technology and --**

22   Q. Understanding --

23   **A. -- what goes into the software development**

24   **process, and also what is industry standard procedure**

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1   for preserving source code, and then also the

2   forensic data recovery aspects of the case.

3   Q. Are you able, as an expert, to determine,

4   assuming files are gone or deleted -- it kind of has

14:22 5   that intentionality context that someone snuck in and

6   files are no longer there, for whatever reason.

7   Are you able to differentiate the reasons

8   if some internal device in the computer, intrusion

9   detection device destroyed the files, as opposed to

14:22 10   someone going in and somehow deleting them?

11   A. I've done a lot of work, specifically

12   forensic-related work to -- recovering deleted files,

13   and there are -- every byte of data potentially can

14   be a trace of information, and so when we're talking

14:22 15   about billions and trillions of bytes of data, there

16   are a large number of traces.

17   So when I go in to do forensic analysis,

18   I'm looking for information that's stored in the

19   computer, or I'm also looking at how the information

14:23 20   has been altered, when it's been altered, and I am

21   able to reconstruct what happened in numerous

22   situations.

23   So if there was a program that deleted the

24   file, on there will be a trace.

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1   If it was deleted by a particular

2   individual, there may be a log entry that shows that

3   individual logging in.

4   There are -- I've worked on cases where

14:23 5   there actually have been history of the commands that

6   were entered, and so in some of the cases where I've

7   gone in to do this forensic work, I actually was able

8   to identify who logged in, which machine they logged

9   in from, and the actual commands they used to delete

14:23 10   the files.

11   Q. But here you haven't been around long

12   enough to do that yet?

13   A. That's correct.

14   MR. FLYNN: Thank you.

14:24 15   THE COURT: Any further with this witness?

16

17   REDIRECT EXAMINATION

18   BY MR. JAKOPIN:

19   Q. Counsel had mentioned an intrusion

14:24 20   detection device.

21   Are you aware of software companies who've

22   developed source code putting devices on that source

23   code to then destroy it?

24   A. It's a very common practice to develop a

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1   fire wall, both hardware and software, that detects

2   intrusion onto a network, and we've heard some

3   testimony about that, that there's this Cisco router

4   that has limits of what comes in, and when it detects

14:24 5   an intrusion, it actually logs it and blocks it.

6   That is almost universal in companies that

7   are connected to the Internet.

8   This concept of using an intrusion device

9   to destroy the company's assets is a very unusual

14:25 10   thing, and usually the CTO or the people in charge

11   would be responsible for maintaining the company's

12   source code assets.

13   And so something that would delete the

14   only copy that the company had would be reckless and

14:25 15   very costly to the company.

16   MR. JAKOPIN: Thank you.

17   MR. FLYNN: One more thing, then.

18

19   RECROSS EXAMINATION

14:25 20   BY MR. JAKOPIN:

21   Q. Have you ever worked for a company where

22   the government ordered that type of a system?

23   A. No, I have not. It seems very unusual.

24   MR. FLYNN: Thank you.

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1   THE COURT: All right. Witness may be

2   excused.

3   (Witness excused.)

4   MR. PEEK: Your Honor, I'm going to

14:25 5   proffer an affidavit from the United States Air Force

6   in which -- I think it addresses this issue raised by

7   Mr. Flynn, where Mr. Hennessy, who gives the

8   affidavit, says that, "I understand that

9   Mr. Montgomery has stated that certain governmental

14:26 10   officials require that eTreppid put into place a

11   security protocol that would cause eTreppid source

12   codes to be" -- "source code to be automatically

13   deleted if anyone attempted to access it improperly.

14   To the best of my knowledge, no Air Force official

14:26 15   requires such a security protocol."

16   I understand that Mr. Hennessy may be

17   available by telephone if there's an objection at all

18   to this affidavit.

19   MR. FLYNN: The only objection we have,

14:26 20   we -- I think it should be sealed.

21   MR. PEEK: Well, we filed it sealed, your

22   Honor.

23   MR. FLYNN: We would be stuck with a

24   waiver issue.

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1   We don't doubt that the Air Force has no

2   knowledge. We don't doubt that the Air Force has no

3   knowledge. The Air Force is not the agency we're

4   dealing with in this particular instance, so --

14:26 5   MR. PEEK: Well, that may be their theme,

6   your Honor.

7   THE COURT: Well, there's no objection to

8   the affidavit, then --

9   MR. LOGAR: Well, it's hearsay.

14:27 10   THE COURT: Plus in the context of this

11 particular hearing, both sides have filed

12 affidavits --

13   MR. PEEK: Yeah. The --

14   THE COURT: -- without objection, so --

14:27 15   MR. PEEK: Chapter 31, your Honor, permits

16 hearing on affidavit, so does Rule 65, and I just

17 said that the gentleman is available by telephone if

18 the Court wants to talk to the witness by telephone.

19   MR. FLYNN: And I submit, your Honor, if

14:27 20 it becomes important enough as we go on, I'm going to

21 reserve; we may have to have Mr. Hennessy on the

22 telephone.

23   THE COURT: I'm sorry?

24   MR. FLYNN: If --

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1   THE COURT: Have who?

2   MR. PEEK: Mr. Hennessy.

3   THE COURT: Oh, Mr. Hennessy, I'm sorry.

4   MR. FLYNN: Mr. Hennessy.

14:27 5   MR. PEEK: John Mr. Hennessy.

6   THE COURT: Yeah. If we need to, we need

7 to, but right now I can't judge that.

8   MR. FLYNN: I'll reserve my objection --

9   THE COURT: All right.

14:27 10   MR. FLYNN: -- until such time as we

11 determine whether --

12   MR. PEEK: Your Honor, then, we have

13 Mr. Trepp, I think, who is going to testify next.

14   THE COURT: All right. Step over here

14:28 15 first to be sworn, please, sir.

16

17   WARREN TREPP,

18 called as a witness, having been first duly sworn,

19   testified as follows:

20

21   DIRECT EXAMINATION

22 BY MR. JAKOPIN:

23   Q. Can I have your name, please.

24   **A. Warren Trepp.**

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1   **Q. What's your current occupation?**

2   **A. I'm the CEO of eTreppid Technologies.**

3   **Q. For how long have you been that?**

4   **A. About seven years, sir.**

14:28 5   **Q. Prior to eTreppid, what did you do?**

6   **A. I worked on -- I was actually semiretired**

7 **for a while making personal investments, and prior to**

8 **that, I worked on Wall Street for about 20 years.**

9   **Q. What's your educational background?**

14:28 10   **A. I graduated high school and took some**

11 **classes in college, but got no degree.**

12   **Q. Do you have any technical training?**

13   **A. Relative to?**

14   **Q. Relative to software?**

14:29 15   **A. Nothing that I haven't been able to learn,**

16 **with the exception of the time I spent with the**

17 **company.**

18   **Q. Okay. Explain how you came to be involved**

19 with eTreppid?

14:29 20   **A. I was introduced to Dennis by a third**

21 **party who said that Dennis had what could be a great**

22 **opportunity for an investment in the high tech world.**

23   **Q. Did there come a time when you met**

24 Mr. Montgomery?

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1   **A. Yes.**

2   **Q. When was that?**

3   **A. I believe I met him the first time in '96,**

4 **and then I met him again in 1997.**

14:29 5   **Q. In your initial discussions, did you come**

6 to some idea as to what a company was going to do?

7   **A. Well, Dennis believed that he had a**

8 **potential to create a better compression pattern**

9 **recognition technology that could be developed over**

14:30 10 **time with the appropriate employees and capital to**

11 **bring to fruition something that would be**

12 **revolutionary to the industry as is.**

13   **Q. Did there come a time that you ended up**

14 forming eTreppid?

14:30 15   **A. Yes. At the end of 1998.**

16   **Q. And as part of that formation, was there a**

17 series of agreements that were entered into?

18   **A. Yes.**

19   **Q. Was one of those a Contribution Agreement**

14:30 20 that was signed where certain technology of

21 Mr. Montgomery was sold to the company?

22   **A. That is correct.**

23   **Q. And was there, then, also an Operating**

24 Agreement that was formed at that same time?

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1   A. Yes.

2   Q. Did the Operating Agreement dictate how

3 the company would operate?

4   A. Certainly.

14:31 5   MR. JAKOPIN: I hand you a copy.

6   MR. PEEK: Get it marked first. The court

7 clerk --

8   MR. JAKOPIN: We will mark it as

9 Exhibit 2, because I believe the chart was Exhibit 1.

14:31 10   THE WITNESS: Your Honor, I left my

11 glasses over there.

12   THE COURT: I know the feeling.

13   MR. LOGAR: Your Honor, are we marking the

14 exhibits consecutively?

14:31 15   THE COURT: Yes.

16   MR. JAKOPIN: The chart was marked as

17 Exhibit 1.

18   THE COURT: Yeah.

19   MR. JAKOPIN: This is Exhibit 2.

14:31 20   THE COURT: Yes.

21   MR. PEEK: That's fine with me, your

22 Honor, instead of A, B, C.

23   THE COURT: It just makes it easier to

24 deal with.

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1   THE COURT: Now, excuse me for

2 interrupting, but it helps me if you can tell me

3 where this is.

4   Is this the Amended Operating Agreement or

14:33 5 is this another one?

6   MR. JAKOPIN: This is at page six, your

7 Honor, of the Operating Agreement of Intrepid

8 Technologies --

9   THE COURT: And was that --

14:33 10   MR. JAKOPIN: -- dated September 28th,

11 1998.

12   MR. PEEK: It's the original one, your

13 Honor.

14   MR. JAKOPIN: It's the original one.

14:33 15   THE COURT: And where is that in the

16 exhibits?

17   Because I've got an amended one dated two

18 thousand -- November the 1st, 2001, and either -- if

19 there's one in here I can look at, that's fine.

14:33 20   Otherwise, I wouldn't mind, if nobody else

21 does, looking over Mr. Trepp's shoulder, because I

22 want to see what we're talking about.

23   MR. JAKOPIN: I believe it was attached as

24 an exhibit to the Reply, your Honor.

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1   MR. PEEK: I agree.

2   (Exhibit 2 was marked for identification.)

3 BY MR. JAKOPIN:

4   Q. Is this a copy of the initial Operating

14:31 5 Agreement that we were referring to in the previous

6 question?

7   A. Yes.

8   Q. And at the time was the company known as

9 Intrepid Technologies, LLC?

14:32 10   A. It was.

11   Q. Referring to what is page six at

12 paragraph 2.7, do you see the paragraph that's

13 entitled Purpose and Business of LLC?

14   A. Yes.

14:32 15   Q. Is it your understanding that would be,

16 "To develop, patent, distribute, license and exploit

17 in any manner and on a worldwide basis that certain

18 software compression technology contributed by the

19 Montgomery Trust and now owned by the LLC pursuant to

14:33 20 the terms and conditions of the Montgomery Trust

21 Contribution Agreement and to finance any and all of

22 the foregoing activities"?

23   That was collectively the business?

24   A. That's correct.

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1   MR. PEEK: Well --

2   MR. JAKOPIN: But I can hand you a copy,

3 if that would be more efficient.

4   THE COURT: Okay. I got the amended and

14:34 5 restated, and I've got an assignment of patent, and

6 that's -- I don't see the other one.

7   MR. JAKOPIN: Here is a copy for your

8 Honor.

9   THE COURT: All right.

14:34 10   MR. LOGAR: Your Honor, may I ask what

11 you've been given by counsel?

12   THE COURT: I've been given -- why don't

13 you come up here and look at it.

14   MR. LOGAR: Just give me the title.

14:34 15   THE COURT: It's Operating Agreement of

16 Intrepid Technologies, LLC.

17   MR. LOGAR: The one that's been marked as

18 Exhibit 2?

19   THE COURT: I can only tell you that's

14:34 20 what they represent to me.

21   MR. LOGAR: Okay. Thank you.

22   THE COURT: Okay. We're on page six,

23 right? Paragraph 2.7, if I remember right?

24   MR. JAKOPIN: Right. And that was --

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1 THE COURT: Okay.

2 MR. JAKOPIN: -- the business of the

3 company.

4 THE COURT: All right.

14:34 5 MR. PEEK: We're looking at it.

6 Jerry is looking at it.

7 Your Honor, just -- may we have a moment,

8 please.

9 THE COURT: Yes. Yeah.

14:35 10 MR. PEEK: Thank you.

11 Your Honor, it is actually attached to the

12 Reply, but the problem is, it's the last document of

13 Exhibit A.

14 A whole series of Operating Agreements are

14:35 15 attached as Exhibit A, so I apologize we didn't break

16 them down, but it's actually in there.

17 THE COURT: That's all right. This is a

18 document I just got --

19 MR. PEEK: Yeah.

14:35 20 THE COURT: So I haven't had a chance to

21 read it --

22 MR. PEEK: Okay.

23 THE COURT: -- with a whole lot of care.

24 All right.

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1 MR. JAKOPIN: I was reading from paragraph

2 2.7, your Honor.

3 THE COURT: Yeah, I'm with you.

4 MR. JAKOPIN: The Purpose and Business of

14:35 5 the LLC.

6 MR. LOGAR: Excuse me, your Honor.

7 Has the document been identified and

8 offered into evidence?

9 THE COURT: I understand that it's

14:35 10 Exhibit 2. I --

11 MR. LOGAR: Has it been offered into

12 evidence?

13 THE COURT: It has not been offered into

14 evidence.

14:35 15 MR. LOGAR: Then, I'll object to any

16 reference to the body of the document until it is.

17 BY MR. JAKOPIN:

18 Q. Mr. Trepp, is what has been identified as

19 Exhibit 2, which is the Operating Agreement of

14:35 20 Intrepid Technologies, the agreement that was entered

21 into between Friendly Capital Partners, Fremont

22 Trust, and Montgomery Trust?

23 A. Yes.

24 MR. JAKOPIN: I'd like to offer Exhibit 2

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1 into evidence.

2 MR. LOGAR: Your Honor, I still object.

3 There's an inadequate foundation based

4 upon the individuals that have executed the document

14:36 5 on behalf of the proposed parties.

6 THE COURT: Are you familiar with this

7 document, Mr. Trepp?

8 THE WITNESS: Well, I know this is the

9 document that we put together when we started the

14:36 10 business in 1998.

11 Other than that, I frankly don't -- I --

12 THE COURT: That's what I mean.

13 Are you familiar with the document? Is it

14 a document you've seen before?

14:36 15 THE WITNESS: Well, I signed it.

16 MR. PEEK: He signed it, your Honor.

17 THE COURT: And does it appear to be a

18 true and correct copy of that document?

19 THE WITNESS: To the best of my knowledge,

14:36 20 your Honor.

21 THE COURT: It's admitted.

22 (Exhibit 2 was admitted into evidence.)

23 BY MR. JAKOPIN:

24 Q. The Purpose and Business of the LLC

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1 referred to certain software compression technology.

2 Do you see that?

3 A. Yes.

4 Q. What was your understanding of that

14:37 5 certain software compression technology?

6 MR. LOGAR: Objection, your Honor.

7 MR. FLYNN: Object.

8 MR. LOGAR: Parol evidence rule.

9 The language speaks for itself. Unless it

14:37 10 can be shown that there's any confusion by any of the

11 terms used, the document speaks for itself and his

12 opinion is irrelevant and immaterial.

13 THE COURT: It's overruled.

14 Go ahead.

14:37 15 BY MR. JAKOPIN:

16 Q. Can you answer the question?

17 THE COURT: Yes.

18 THE WITNESS: Clearly, my understanding of

19 what -- and if this is the proper question -- excuse

14:37 20 me, I think I'm answering what the question is, but

21 I'm not crystal clear on it, but what I believed what

22 Dennis and I had agreed to do is basically start a

23 business, use what he had to develop, with basically

24 my capital, giving him the ability to hire the

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1 appropriate employees to develop, on an on-going

2 basis, the exploitation of technologies relating to

3 what he had done demonstrations for me over the prior

4 years.

14:38 5 Those demonstrations included video

6 compression, audio compression, pattern recognition,

7 and various and sundry other things that my

8 expectation certainly was, with the right capital,

9 right people, we would be able to develop over time.

14:38 10 THE COURT: All right.

11 BY MR. JAKOPIN:

12 Q. Turning to paragraph 6.5.

13 A. Yes.

14 Q. Was the -- there's a reference there to

14:38 15 the Time Devoted to Management by the manager.

16 Was the original manager Mr. Montgomery?

17 A. I believe that was the case.

18 Q. Okay. So is it your understanding,

19 according to this agreement, that he should devote

14:39 20 substantially all of his time and attention and

21 efforts to the Business, capital "B," and affairs,

22 small "A," of the LLC during reasonable business

23 hours?

24 A. Yes. And not only that, I would certainly

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1 **expect that if we were making a commitment together**

2 **to be partners in this, I expect that he would**

3 **certainly be willing to contribute his time, efforts,**

4 **and energies into this solely and exclusively, by**

14:39 5 **virtue of the fact that he was going to own half of**

6 **the business.**

7 Q. And at the time that the business was

8 formed, did he own half of the business?

9 A. **Absolutely.**

14:39 10 Q. How much money did you put into the

11 company, initially, Mr. Trepp?

12 A. **I think it was a million three hundred**

13 **thousand dollars.**

14 Q. Did Mr. Montgomery put in any money

14:40 15 initially?

16 A. **He made a contribution of his technology,**

17 **everything to date what he had created for his**

18 **50 percent.**

19 **So, in theory, he got a million three in**

14:40 20 **stock value, but he put no money in it.**

21 MR. JAKOPIN: Thank you.

22 THE CLERK: Exhibit 3.

23 (Exhibit 3 was marked for identification.)

24 MR. LOGAR: Counsel, would you identify it

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1 for the record, please.

2 MR. JAKOPIN: I've had marked as Exhibit 3

3 the Contribution Agreement by and between Intrepid

4 Technologies, LLC, and Dennis Montgomery and Brenda

14:40 5 Montgomery as the co-trustees of the Montgomery

6 Family Trust, and the contributor in Dennis

7 Montgomery, dated and executed September 28th, 1998.

8 BY MR. JAKOPIN:

9 Q. Do you recognize this, Mr. Trepp?

14:41 10 A. Yes.

11 Q. What is it?

12 A. **This is the deal that I referred to before**

13 **as to what was -- Dennis was contributing into the**

14 **pot for his 50 percent interest in going forward with**

14:41 15 **the company.**

16 Q. Is this a true and correct copy of this

17 agreement?

18 A. **To the best of my knowledge.**

19 Q. And is that your signature --

14:41 20 A. **Yes, it is.**

21 Q. -- on page 12?

22 A. **Yes.**

23 MR. JAKOPIN: I'll offer Exhibit 3 into

24 evidence, your Honor.

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1 THE COURT: Any objection?

2 MR. LOGAR: No objection.

3 THE COURT: Admitted.

4 (Exhibit 3 was admitted into evidence.)

14:41 5 BY MR. JAKOPIN:

6 Q. Does this agreement define what it was

7 that Mr. Montgomery had contributed to Intrepid

8 Technologies, LLC?

9 A. **To the best of my knowledge.**

14:42 10 Q. Okay. Do you recall if paragraph 1.2.1 is

11 referred to as CD No. 1?

12 A. **I don't remember specifically ever**

13 **physically getting a CD, but clearly the**

14 **understanding of -- if there was a CD, what we were**

14:42 15 **being given was contributed to the company.**

16 Q. Was there, early on in the time that the

17 company started, any discussion between you and

18 Mr. Montgomery that there was certain software

19 relating to compression technology that he was

14:42 20 contributing, but there was other software relating

21 to patent (sic) recognition technologies that he was

22 not contributing?

23 A. **Absolutely.**

24 MR. FLYNN: Objection; leading.

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1   MR. LOGAR: And parol evidence.

2   MR. FLYNN: And particularly, the whole

3 thing is fraught with parol evidence which you can --

4   THE COURT: Well, I think that the parol

14:43 5 evidence rule, one, our Court has modified the parol

6 evidence rule pretty considerably in the last four or

7 five years, and I think even before that, to allow

8 people to make explanations about their understanding

9 of the contracts and the negotiations that they were

14:43 10 involved in to aid the Court in understanding and

11 interpreting the agreement.

12   I think that the old, hard-and-fast parol

13 evidence rule is dead in Nevada.

14   I'm sorry, you were going to say

14:43 15 something?

16   MR. FLYNN: Your Honor, I think your

17 Honor's rationale is probably correct. I don't know

18 whether it's dead or not, but my objection is really

19 the following.

14:43 20   THE COURT: Go ahead.

21   MR. FLYNN: I think the -- given the

22 nature of the fact that this is -- this clause has --

23 this contract has an integration clause, the

24 examination should be extremely direct with no

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1 leading.

2   I think Mr. Trepp should have the

3 responsibility, without Mr. Jakopin's help, to

4 explain these things; otherwise, I think it would

14:44 5 indicate why the underlying rationale of the parol

6 evidence rule was traditionally a good rule.

7   THE COURT: All right. Well, I understand

8 that and I agree with the leading part of it.

9   I mean, I usually, even in a trial, permit

14:44 10 a lot of leading questions, because nine times out of

11 ten times they're about issues that are important,

12 but if we're talking about a central issue, I would

13 ask that you not ask leading questions about this

14 particular clause or interpretation.

14:44 15   If you want to ask him what he thinks

16 about it or what he did or what his thoughts were or

17 how he understands it, that's fine, but let him tell

18 you what the answer is.

19   MR. JAKOPIN: Fine. We'll do that, your

4:44 20 Honor.

21   THE COURT: All right.

22 BY MR. JAKOPIN:

23   Q. With respect to the -- what's referred to

24 as certain compression technology in this agreement,

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1 what was your understanding of what was the

2 technology that was being contributed?

3   A. Basically, everything that Dennis had

4 worked on in the past, he had told me he was putting

14:45 5 together in a package, and it was something that we

6 could share on a going-forward base.

7   It certainly had -- it certainly was not

8 just compression technology, by any stretch of the

9 imagination.

14:45 10   He had given me demonstrations, as an

11 example, to where he took the movie Gunga Din and

12 basically, in front of me, showed me how he could

13 colorize it by identifying a jacket on a person

14 running up the valley; the floor, the sky.

14:45 15   And then he showed me -- this was to

16 interest me in making an investment in the company

17 with him to let it grow over time.

18   So, by showing me these demonstrations, it

19 was clearly showing me he had the ability to take

14:45 20 frame "A," make frame two out of it, and basically do

21 his colorization process, and the way he explained

22 it, it was impossible to do it unless he was able to

23 identify specific patterns in frame "A" that were

24 identical in two.

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1   He could then assign from, you know -- I

2 don't know how he did it, to be perfectly frank, but

3 basically he was able to, over a series of frames,

4 over a time frame, be able to identify patterns in

14:46 5 each one of the frames and then colorize what was a

6 black and white film into what then was color.

7   That would have been a good example of one

8 of the things that I saw, certainly, that I was

9 interested in then making an investment in

14:46 10 conjunction with him on a going-forward basis.

11   Q. Were there any other prototypes that he

12 showed to you before you made an investment?

13   A. There were a number of different things,

14 but they were all things that were work in progress,

14:46 15 and I clearly understood, and we discussed that I was

16 going to have to put a million, two million, three

17 million, a substantial amount of capital in this and

18 it was going to take us a minimum of two to three

19 years to develop this.

14:47 20   I mean, this was a research and

21 development project, and I knew it was going to take

22 a long period of time and, frankly, I had said, "It's

23 not only going to take a lot of money; it's going to

24 take more manpower than you could do it on your own

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1   and you better go find some people to help you."

2   Q. When you then initially formed the

3   company, what was Mr. Montgomery's role?

4   A. He was the -- well, I totally relied on

14:47 5   him for day-to-day operations.

6   He had made all the hiring decisions, the

7   firing decision. I have no technical knowledge. I

8   was, I would say, more so as an investor, certainly,

9   but I certainly had tremendously more business

14:47 10   experience and knowledge than Dennis did in running a

11   business, and I would try to help him on an overview

12   basis, but I had no way of helping him on a daily

13   basis with the employees, the programmers, or

14   anything of that ilk.

14:47 15   MR. JAKOPIN: Okay. Thank you.

16   THE COURT: Just for planning purposes, at

17   three o'clock we are going to switch reporters, so

18   we'll take a recess at that time.

19   MR. JAKOPIN: Okay, your Honor.

14:48 20   THE COURT: Did you mark something else?

21   MR. JAKOPIN: I can, your Honor.

22   (Exhibit 4 was marked for identification.)

23   MR. JAKOPIN: I marked as Exhibit 4 an

24   Amended and Restated Operating Agreement, dated

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1   Q. During the performance of this agreement,

2   was it your understanding that that is what he was

3   doing?

4   A. Absolutely.

14:50 5   Q. Was Mr. Montgomery paid to do those

6   activities during that period?

7   A. Oh, of course.

8   THE CLERK: Your Honor, that Exhibit 4 was

9   not formally admitted yet.

14:50 10   MR. LOGAR: It wasn't even offered.

11   THE COURT: It wasn't offered.

12   MR. JAKOPIN: I apologize.

13   Can I have Exhibit 4 offered into

14   evidence, your Honor?

14:50 15   THE COURT: They did offer it.

16   Any objection?

17   MR. FLYNN: No, your Honor.

18   THE COURT: It's admitted.

19   (Exhibit 4 was admitted into evidence.)

14:51 20   (Exhibit 5 was marked for identification.)

21   MR. JAKOPIN: Marked as Exhibit 5, an

22   Amended and Restated Operating Agreement, dated

23   November 1st, 2001.

24   BY MR. JAKOPIN:

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1   January 1, 1999.

2   BY MR. JAKOPIN:

3   Q. Do you recognize that, Mr. Trepp?

4   A. Yes.

14:48 5   Q. Is this a true and original copy of this

6   Amended and Restated Operating Agreement?

7   A. Yes. I clearly signed it.

8   To the best of my knowledge, that's

9   correct.

14:48 10   (Discussion off the record.)

11   BY MR. JAKOPIN:

12   Q. Referring to page 23, which is paragraph

13   6.5 -- actually, where it says Time Devoted to

14   Management.

14:49 15   A. Yes.

16   Q. Do you see the same clause that had been

17   in the previous agreement where now Mr. Montgomery is

18   the chief technology officer? He's no longer the

19   manager; he's been given the title chief technology

14:50 20   officer, where he shall devote substantially all of

21   his full time and attention and efforts to the

22   Business, capital "B," again, and affairs, small "A,"

23   of the LLC during reasonable business hours?

24   A. Yes.

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1   Q. Do you recognize this, Mr. Trepp?

2   A. Yes.

3   Q. Is this a true and original copy of this

4   exhibit?

14:51 5   A. Yes, to the best of my knowledge.

6   MR. JAKOPIN: I'd like to offer Exhibit 5

7   into evidence.

8   MR. FLYNN: No objection.

9   THE COURT: It's admitted.

14:51 10   (Exhibit 5 was admitted into evidence.)

11   BY MR. JAKOPIN:

12   Q. Referring again to what is in paragraph

13   6.5, Mr. Trepp.

14   A. What page is that?

14:51 15   Q. This is page 25.

16   A. Okay.

17   Q. The paragraph is referred to as Time

18   Devoted to Management.

19   Do you see that?

14:52 20   A. Yes.

21   Q. Do you see the same clause that says that

22   Mr. Montgomery shall devote substantially all of his

23   full time and attention and efforts to the Business,

24   capital "B," and affairs, small "A," of the LLC

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1 during reasonable business hours?

2   A. Yes, I do.

3   Q. And did he do that during the term of this

4 agreement?

14:52 5   A. Yes, he did.

6   Q. And was he paid for that?

7   A. Absolutely.

8   Q. And were these payments for the various

9 different Operating Agreements, those were in

14:52 10 addition to the percentage ownership that he had in

11 the company?

12   A. That is correct.

13   MR. JAKOPIN: Nothing further with this

14 exhibit right now.

14:52 15   MR. FLYNN: Your Honor, again, I'd caution

16 on all the leading.

17   THE COURT: Try not to ask so many leading

18 questions when we get down to the questions that are

19 important and central to the case.

14:52 20   MR. JAKOPIN: I will do that, your Honor.

21 BY MR. JAKOPIN:

22   Q. Do you see in these agreements that

23 Mr. Montgomery was what was referred to as CTO?

24   A. Yes.

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1   Q. What were his responsibility as CTO?

2   A. He was responsible for running the

3 day-to-day business as far as the development of all

4 of our technology, from the start through a couple of

14:53 5 weeks ago, overseeing the employees, programmers that

6 worked in the company.

7   Q. He was also on the management committee,

8 correct?

9   A. That is correct.

14:53 10   Q. What were his responsibilities as part of

11 the management committee?

12   A. There were three people on the management

13 committee, and that group was supposed to be -- I

14 would call it like an executive committee to

14:53 15 basically determine what the overview or corporate

16 plans for what the company would do on a

17 going-forward basis.

18   Q. Were you paid a salary --

19   Was he paid a salary as a CTO?

14:54 20   A. He was paid a salary from day one.

21   Q. Do you remember what his most recent

22 salary was?

23   A. $300,000.

24   MR. FLYNN: Can we have a time frame, your

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1 Honor?

2   THE WITNESS: He was paid $300,000 the

3 last three years he was employed there; each year.

4 BY MR. JAKOPIN:

14:54 5   Q. Did you have an understanding of all of

6 the various engineers who had been hired at eTreppid

7 and what they did? Up until recently?

8   A. I had Dennis almost -- I had Dennis -- we

9 had lunch every day for almost seven years. We

14:54 10 discussed everything.

11   When I say everything, I would ask an

12 awful lot of questions about the technical sides of

13 the business to determine what else there was I could

14 do to help in the process.

14:55 15   If he needed either more capital or more

16 employees or more equipment or whatever that would

17 be, that would be the general gist of the

18 conversation.

19   He told me when he hired people. He told

14:55 20 me when he fired people. I frankly never got into

21 in-depth conversations as to who he would hire and

22 why; it would generally be, "We're hiring this person

23 for hardware development," or, "We need more programs

24 to do software development," or something.

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1   Generally speaking, that would be the

2 conversation.

3   But we had lunch every day. I mean, we

4 knew exactly -- I -- we shared information every day.

14:55 5   Q. On the business side, what did you

6 contribute?

7   A. Well, clearly the capital to, A, start the

8 business; B, contributed capital when the time frame

9 and the amount of money that Dennis explained to me

14:56 10 he thought we needed to develop the business.

11   We made a decision that we would go back

12 to the original investors and ask for a capital call

13 to generate more money to operate the business.

14   At some point, I got so concerned that

14:56 15 Dennis was going to get diluted down because he

16 couldn't afford to put more money in the business, I

17 then chose, through one of my own personal entities,

18 to start lending millions of dollars into the

19 business to keep the business going until we could

14:56 20 make money.

21   The company lost money from '99 to 2003,

22 millions and millions of dollars.

23   2004 was the first year we made a little

24 money.

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1   **And 2005, we made a little more money.**
2   THE COURT: For the record, just so we
3   have it of record, I marked the affidavit that was
4   submitted as Exhibit 6; it's not admitted but it's
14:57 5   marked and so the next exhibit will be Exhibit 7.
6   (Exhibit 6 was marked for identification.)
7   MR. PEEK: In fact, actually, your Honor,
8   I would offer Exhibit 6.
9   Or did you go ahead and admit it as per
14:57 10   our earlier discussion?
11   THE COURT: To me, you know, we've got all
12   kinds of material that's been submitted here in aid
13   in opposition to this injunction and to this process
14   that's hearsay, that's not been through the --
14:57 15   MR. PEEK: We don't have any affidavits.
16   THE COURT: -- process, and so I'm going
17   to admit Exhibit 6.
18   MR. FLYNN: Your Honor, is Exhibit 6 --
19   that's Exhibit A?
14:57 20   MR. JAKOPIN: No, it's not.
21   THE COURT: No, Exhibit 6 is the affidavit
22   of the --
23   MR. FLYNN: Oh, yeah.
24   THE COURT: -- fellow from the Air Force.

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1   MR. FLYNN: So that's been admitted.
2   And since you're now admitting it, your
3   Honor, I would have to object. I was reserving it
4   before because it was never actually offered, but now
14:58 5   at this junction, I'll object.
6   THE COURT: All right. Well, it's
7   admitted.
8   (Exhibit 6 was admitted into evidence.)
9   THE COURT: And Exhibit 7 is Exhibit A to
14:58 10   the Amended Agreement; is that right?
11   MR. JAKOPIN: Yes, it is.
12   (Exhibit 7 was marked for identification.)
13   MR. FLYNN: And I -- we object without
14   foundation, your Honor.
14:58 15   THE COURT: To Exhibit 7?
16   MR. FLYNN: Yeah, until we get some
17   foundation.
18   THE COURT: All right.
19   BY MR. JAKOPIN:
14:58 20   **Q.** Mr. Trepp, do you recognize Exhibit A?
21   **A. Yes.**
22   **Q.** What is it?
23   **A. It's the people that own the eTreppid**
24   **Technologies, LLC.**

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1   **Q.** Is this a true and correct copy of the
2   Exhibit A to the Amended and Restated Operating
3   Agreement as updated as of March 1st, 2003?
4   **A. Yes.**
14:58 5   MR. JAKOPIN: I'd like to offer Exhibit A
6   into evidence.
7   THE CLERK: That's Exhibit 7.
8   MR. JAKOPIN: I'm sorry, Exhibit 7.
9   MR. FLYNN: Your Honor, may I have a
14:58 10   moment?
11   THE COURT: Yes.
12   (Discussion off the record.)
13   MR. FLYNN: We're going to object, your
14   Honor.
14:59 15   MR. PEEK: I'm sorry?
16   MR. FLYNN: We're going to object, your
17   Honor.
18   THE COURT: On the grounds?
19   MR. FLYNN: Mr. Montgomery was a partner;
14:59 20   fifty-fifty to start with.
21   Over his request, he was never given
22   access to any books and records, if there are any
23   books and records. There were never any corporate
24   meetings, there were never corporate protocols

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1   complied with.
2   All of the records were in Mr. Trepp's
3   back pocket. Mr. Montgomery was given and shown
4   virtually nothing among the corporate record.
14:59 5   So to substantiate what is, in effect, a
6   compilation, we would need to look at the underlying
7   documents.
8   So it may become irrelevant, but at this
9   juncture, I have to object because we believe it's
14:59 10   basically a compilation from underlying documents
11   which we believe are not going to be kept in
12   accordance with normal and standard accounting
13   practices.
14   MR. JAKOPIN: Your Honor --
15:00 15   THE COURT: Well, I think that's an
16   objection that we might have to deal with down the
17   road but for the purpose of this hearing, I'm going
18   to admit Exhibit 7.
19   MR. JAKOPIN: Thank you.
15:00 20   (Exhibit 7 was admitted into evidence.)
21   BY MR. JAKOPIN:
22   **Q.** As of March 3rd -- as of March 1st, 2003,
23   is this a true and correct list of all the various
24   investors in Intrepid Technologies, LLC?

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1   A. Yes, it is.
2   Q. Are there any additional investors in
3   eTreppid since that time?
4   A. No.
15:00 5   MR. JAKOPIN: Okay. Thank you.
6   That's all I have with respect to
7   Exhibit 7.
8   THE COURT: Well, I haven't seen the court
9   reporter.
15:00 10   (Discussion off the record.)
11   MR. JAKOPIN: We're at three o'clock, your
12   Honor. You said that we needed to --
13   THE COURT: Well, all I -- ordinarily, I
14   wouldn't --
15:01 15   This doesn't need to be on the record.
16   (Discussion off the record.)
17   THE COURT: All right. Is this a good
18   time?
19   MR. JAKOPIN: This is fine.
15:01 20   THE COURT: Let's take -- we'll take --
21   let's give her enough time, give you guys enough
22   time; we'll take until 25 after.
23   Make it 20 after.
24   MR. PEEK: Thank you, your Honor.
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1   STATE OF NEVADA   )
) ss.
2   COUNTY OF WASHOE)
3
4   I, LIZA CHAPEN, Official Reporter of the Second
5   Judicial District Court of the State of Nevada, in
6   and for the County of Washoe, do hereby certify:
7   That as such reporter, I was present in
8   Department No. 9 of the above court on said date,
9   time and hour, and I then and there took verbatim
10   stenotype notes of the proceedings had and testimony
11   given therein.
12   That the foregoing transcript is a full,
13   true and correct transcription of my said stenotype
14   notes, so taken as aforesaid. That the foregoing
15   transcript was taken down under my direction and
16   control, and to the best of my knowledge, skill and
17   ability.
18   DATED: At Reno, Nevada, this _____ day of
19   _____ , 2006.
20
21   _____
                         LIZA CHAPEN, NV CCR #93
22
23
24

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1   MR. FLYNN: Thank you, your Honor.
2   THE COURT: All right. We'll be in recess
3   until then.
4   (Recess taken.)
5   (End of Volume I.)
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